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**HARRIS'**  
**JUSTICE OF THE PEACE GUIDE**

**FOR THE**  
**STATE OF WASHINGTON**

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**BY**  
**ARTHUR M. HARRIS**  
OF THE  
**Of the Seattle Bar**

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**PORTLAND, OREGON**  
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## PREFACE.

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The aim of this book is to show the conduct of the case in a justice of the peace court from the filing of the complaint to the execution of the judgment or the appeal therefrom. It is not a treatise or thesis on the origin and history of justices of the peace; it is a plain, practical guide to the laws and procedure of these courts of limited jurisdiction.

The author has endeavored to simplify the intricacies of procedure by simple explanatory introductions or editorial matter to the various statutes.

The justice is cited to Remington & Ballinger's Code and include the amended garnishment statutes of the Session of 1911.

The form is given with the statute, and can be found in the index.

ARTHUR M. HARRIS.

Seattle, Washington, 1912.

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An action is defined to be a legal prosecution in an appropriate court by a party complainant against a party defendant to obtain the judgment of that court in relation to some rights claimed to be secured or some remedy claimed to be given by law to the party complaining. (Am. & Eng. Ency.)

The most important duty of the justice of the peace, as well as the most considerable part of all his duties, is the adjudication of what are known as civil suits; disputes arising between individuals rather than between society and the individual. Both the civil and the criminal jurisdiction of the justice of the peace are limited, as we shall see later;

yet the interests involved in a civil suit are large enough to require a careful knowledge of the civil procedure of the justice court.

Concerning, then, the matter of civil suits, let us inquire, first, as to the justice's

### **§ 1. JURISDICTION OF CIVIL ACTIONS.**

It might properly be explained here that the word "jurisdiction" means the power to hear and determine. There are various other definitions, but the general broad meaning is the power to hear and determine certain civil actions and proceedings.

### **§ 2. ACTIONS ARISING FROM CONTRACT.**

Of an action arising on contract for the recovery of money only in which the sum claimed is less than one hundred dollars.

### **§ 3. ACTIONS FOR INJURIES TO PERSON OR PROPERTY.**

Of an action for damages for injuries to the person, or for taking or detaining personal property or for injuring personal property, or for an injury to real property when no issue raised by the answer involves the plaintiff's title to or possession of the same, when the amount of damages claimed is less than one hundred dollars; also of actions to recover the possession of personal property, when the value of such property, as alleged in the complaint, is less than one hundred dollars;

Of an action for a penalty less than one hundred dollars;

### **§ 4. ACTIONS ON BONDS.**

Of an action upon a bond conditioned for the payment of money, when the amount claimed is less than one hundred dollars, though the penalty of the bond exceed that sum, the judgment to be given for the sum actually due, not exceeding the amount claimed in the complaint;

### **§ 5. ACTIONS ON SURETY BONDS.**

Of an action on an undertaking or surety bond taken by him or his predecessor in office, when the amount claimed is less than one hundred dollars;

**§ 6. ACTIONS ARISING FROM FRAUD.**

Of an action for damages for fraud in the sale, purchase or exchange of personal property, when the damages claimed are less than one hundred dollars;

**§ 7. JUDGMENT ON CONFESSION.**

To take and enter judgment on confession of a defendant when the amount of the judgment confessed is less than one hundred dollars;

**§ 8. ATTACHMENTS, ETC.**

To issue writs of attachment upon goods, chattels, moneys and effects, when the amount is less than one hundred dollars;

**§ 9. ALL OTHER ACTIONS.**

Of all other actions and proceedings of which jurisdiction is specially conferred by statute, when the amount involved is less than one hundred dollars, and the title to or right of possession of or to a lien upon real property is not involved. [44.]

**§ 10. GENERAL POWERS.**

The justice has power to hear, try and determine all of the actions set forth in the preceding statute, and for that purpose the law has vested him with all the necessary powers which are possessed by courts of record of this state, with the further decree that all laws of a general nature shall apply to the justice's court within proper limits.

Every justice of the peace elected in any precinct in this state is hereby authorized to hold a court for the trial of all actions in the next section enumerated, to hear, try and determine the same according to law; and for that purpose, where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this state; and all laws of a general nature shall apply to such justice's court, as far as the same may be applicable, and not inconsistent with the provisions of this chapter. [43.]

From this it is apparent that the justice should, whenever possible, have a general knowledge of the law. This also illustrates the fact that even though justice procedure is

simple and the amount in controversy small, nevertheless questions involving the weightier principles of law are often submitted to a justice's deliberations.

**In cities of the first class the justice must be an attorney at law. [6533.]**

### **§ 11. JURISDICTION, WHEN VESTED.**

In a dispute between two individuals the court has no power to hear and determine the difference until certain steps have been taken by one or both of the disputants to invoke the court's power and authority. One of the distinctions between a civil action and a criminal action is that in the civil action the matter comes voluntarily into the jurisdiction; in the criminal action the criminal comes involuntarily into the jurisdiction. Another difference is that of time: a civil dispute between two persons may run like an open sore for years, nor shall the civil authority have power of its own motion to interfere and apply the healing ointment of impartial judgment and speedy execution, but let the flesh be scratched never so little with criminal intent, and immediately the law begins to operate upon the aggressor, as a surgeon would deplete the body of a diseased member which threatens the health of other members.

**The court shall be deemed to have obtained possession of the case from the time the complaint or claim is filed, after completion of service, whether by publication or otherwise, and shall have control of all subsequent proceedings. [1769.]**

### **§ 12. TERRITORIAL EXTENT OF JUSTICE'S JURISDICTION.**

**The jurisdiction of justices of the peace in all civil actions, except as provided in the preceding section, shall be coextensive with the limits of the county in which they are elected or appointed, and no other and greater, but every justice of the peace shall continue to reside and perform all the duties of his office in the precinct for which he was elected or appointed during his continuance in office. [1757.]**

The boundary here is geographical, and confined to the county limits in which the justice is elected or appointed. This general limitation was found not specific enough to prevent hardship being maliciously forced on a defendant of dragging him from one end of the county to the other. This was in a large measure prevented by the following enactment:

All civil actions commenced in a justice court against a defendant or defendants residing in a city or town of more than three thousand inhabitants shall be brought in the justice court of the precinct in said city or town in which one or more of such defendants reside. [1756.]

### § 13. WHERE JUSTICE'S OFFICE SHALL BE HELD.

Every justice of the peace shall keep his office in the precinct for which he may be elected, and not elsewhere, but he may issue process in any place in his county. [48.]

The justice may not have his office with a lawyer other than his law partner. If he have a law partner, such partner shall not be permitted to appear or practice as an attorney in any case tried before such justice of the peace. [49.]

### § 14. JURISDICTION SPECIFICALLY PROHIBITED.

The expression, "jurisdiction specifically prohibited," is rather an unfortunate and illogical one, for a court only has jurisdiction to the extent that jurisdiction is granted it by the proper authority. When the court passes these boundaries, jurisdiction automatically ceases.

The term "jurisdiction prohibited" is used in the codified statutes, and for that reason is introduced here.

1. In which the title to real property shall come in question.

2. Nor to an action for the foreclosure of a mortgage, or enforcement of a lien on real estate.

3. Nor to an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction.

4. Nor to any action against an executor or administrator as such. [45.]

#### § 15. ACTING WITHOUT JURISDICTION.

If the justice of the peace shall pass beyond the boundaries of his jurisdiction, the judgments which he shall render are void—not merely voidable, but void absolutely. Nor can any agreement between the parties to an action that the court may try the case confer a jurisdiction which the court has not by law. When he exceeds his jurisdiction, the justice becomes a wrongdoer and liable to the injured party for damages.

#### § 16. JURISDICTION—HOW LOST.

When it appears from the answer of the defendant that the real issue of the case involves the title to real estate, the court will lose jurisdiction of the case. If on the trial of any cause it appears that the title to lands is in question, the justice must certify the cause to the superior court of the county.

If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other, the justice shall immediately make an entry thereof in his docket, and cease all further proceedings in the cause, and shall certify and return to the superior court of the county, a transcript of all the entries made in his docket relating to the cause, together with all the process and other papers relating to the action, in the same manner, and within the same time, as upon an appeal; and thereupon the parties shall file their pleadings, and the superior court shall proceed in the cause to final judgment and execution, in the same manner as if the action had been originally commenced therein, and the cost shall abide the event of the suit. [1863.]

#### § 17. QUESTIONING THE WANT OF JURISDICTION.

We have seen that the matter of jurisdiction is a most important matter, and that the consequences of exceeding the jurisdiction are to make void the whole judgment. If the defendant then wishes to question the jurisdiction of the

court in which he has been brought, he may do so by pleading to the jurisdiction, or by a plea in abatement. When jurisdiction is wanting, that fact often appears on the record, and in that event the defendant may move to dismiss the action for want of jurisdiction.

### § 18. THE SPECIAL APPEARANCE.

When the defect is the want of the proper process or want of proper service, the pleader must be careful of the form in which he makes his motion to dismiss the action, or the motion itself will give the court jurisdiction of the person. In such cases, the defendant will say that he appears specially and for the purpose of making the motion upon the ground of the want of jurisdiction, and for that reason only.

### § 19. STATUTE OF LIMITATIONS (AS APPLICABLE TO JUSTICE PROCEDURE).

Actions can only be commenced within the periods herein prescribed after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute; but the objection that the action was not commenced within the time limited can only be taken by answer or demurrer. [155.]

Within six years,—

An action upon a contract in writing, or liability express or implied arising out of a written agreement. [157.]

Within three years,—

An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;

An action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;

An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

An action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute im-

posing it prescribed a different penalty [limitation].  
[159.]

Within two years,—

An action for libel, slander, assault, assault and battery, and false imprisonment.

An action upon a statute for a forfeiture or penalty to the state. [160.]

Other relief:

An action for relief not hereinbefore provided for shall be commenced within two years after the cause of action shall have accrued. [165.]

## CHAPTER II.

## THE PARTIES TO THE ACTION.

- § 20. What is meant by "parties."
- § 21. Who may be parties to the action.
- § 22. Husband and wife.
- § 23. When husband and wife must join in the action.
- § 24. When husband and wife may join in the action.
- § 25. Separate and antenuptial debts.
- § 26. When wife may be joined on husband's promissory note.
- § 27. The general rule.
- § 28. Liability for the expenses of the family.
- § 29. To secure judgment against the community property.
- § 30. Infants.
- § 31. When the infant is defendant he likewise appears by guardian.
- § 32. Administrators, etc.
- § 33. Assignees as parties.
- § 34. Partners and corporations as parties.
- § 35. Persons severally liable as parties.
- § 36. Rights of parties to intervene.
- § 37. Defect of parties.
- § 38. Correcting mistake in name.
- § 39. Striking one of the plaintiffs out.
- § 40. When the wrong defendant is sued.
- § 41. Rights of one not made a party.

The first thing in a lawsuit is to determine who the parties who are really interested in the action are and whether or not it is permitted to sue them or otherwise involve them in the contemplated action.

**§ 20. WHAT IS MEANT BY "PARTIES."**

The first thing in this connection is to decide the meaning of the word "parties." In the Encyclopedia of Pleading and Practice the definition of the term "parties" is given concisely as follows:

The term "parties" to an action is used to designate the person or persons seeking to establish a right and the person or persons upon whom it is sought to impose a corresponding duty or liability.

The term may mean either a single individual or a class or number of persons, according to the circumstances surrounding the particular case.

### **§ 21. WHO MAY BE PARTIES TO THE ACTION.**

Everyone, as we have seen above, who seeks to establish a right or upon whom it is sought to impose some corresponding duty or liability. Not everyone can come directly into court and establish his rights. The older law imposed legal disability to sue or be sued upon a number of persons, usually those in a domestic dependent condition, as women in marriage or children under the legal age. The modern tendency has been to broaden this phase of the law, and in the state of Washington it is provided:

Every action shall be prosecuted in the name of the real party in interest, except as is otherwise provided by law. [179.]

### **§ 22. HUSBAND AND WIFE.**

The law affecting the relationship of husband and wife one toward the other and the relation of both individually or together has undergone an almost complete change within the last few decades. Woman, as a party to the action in law, has been practically emancipated. In the eyes of the law she is now an altogether responsible person, one who cannot cover her crimes nor avoid her liabilities by pleading that she is a married woman. The woman, in so far as she can contract debts or bind herself with obligations, as a rule, must defend herself or prosecute her rights alone and in her own name, and that whether she be married or single.

Nevertheless, the matrimonial state so directly affects many of the most important property rights of both of the persons to the marriage, that the pleader in bringing an action against either the husband or the wife should be at pains to decide as exactly as possible their true legal status. In view of the nature of the actions in justice court and from the further fact that the interests of real estate are beyond the jurisdiction of the justice of the peace, the question of the propriety or necessity of either spouse to

an action in the justice court is very much simplified. The pleader, however, who seeks to secure a judgment which shall be binding upon the community property of both parties after the proper steps are taken to make the judgment a lien thereon, should be informed of the general statutes governing this matter of the legal capacity of married persons, both male and female, to be parties to the action.

### **§ 23. WHEN HUSBAND AND WIFE MUST JOIN IN THE ACTION.**

The general rule in the state of Washington is that when a married woman is made a party to an action, her husband must be joined with her as one of the parties. The exception to this is, as we have stated above, when the wife has capacity to obligate herself with debts and contracts. In that event she may sue or be sued alone.

1. When the action concerns her separate property, or her right or claim to the homestead property;

2. When the action is between herself and her husband, she may sue or be sued alone;

3. When she is living separate and apart from her husband she may sue or be sued alone. [181.]

The plaintiff should take pains to understand the exact nature of these exceptions. Attention to this matter will save a good deal of unnecessary costs.

### **§ 24. WHEN HUSBAND AND WIFE MAY JOIN IN THE ACTION.**

It should be thoroughly understood at this point that the relation of the husband and wife before marriage in the matter of debts and obligations with third persons is not affected by the union.

### **§ 25. SEPARATE AND ANTENUPTIAL DEBTS.**

Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage nor for the separate debts of each other, nor is the rent or income of the separate property of either liable for the separate debts of the other. [5930.]

Another matter which has undergone some change, even within a comparatively few years, is the question of the liability of the wife to be joined in an action against the husband on a promissory note, when the said note evidenced a community debt.

#### **§ 26. WHEN WIFE MAY BE JOINED ON HUSBAND'S PROMISSORY NOTE.**

In the case of *McDonough v. Craig*, reported in 10 Wash. 239, the supreme court of the state of Washington held that in an action upon a promissory note executed by the husband alone for what is properly alleged to be a community debt, it is proper to make the wife a party defendant. If the plaintiff secures judgment upon the note, he is therefore entitled to have the debt adjudged to be one binding upon the community property.

#### **§ 27. THE GENERAL RULE.**

The law on this subject is covered by the following statute:

Husband and wife may join in all causes of action arising from injuries to the person or character of either or both of them, or from injuries to the property of either or both of them, or arising out of any contract in favor of either or both of them. If a husband and wife be sued together, the wife may defend for her own right, and if the husband neglect to defend, she may defend for his right also. And she may defend in all cases in which she is interested, whether she is sued with her husband or not. [182.]

#### **§ 28. LIABILITY FOR THE EXPENSES OF THE FAMILY.**

The property of either the husband or the wife, or of both, is properly chargeable with the family expenses.

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately. [5931.]

### **§ 29. TO SECURE JUDGMENT AGAINST THE COMMUNITY PROPERTY.**

The justice having jurisdiction and the necessary parties appearing upon the pleadings, judgment which shall become a lien on the community or separate property is usually asked for in the prayer for relief which closes the plaintiff's complaint; judgment against the community estate being particularly prayed for. The absence of a specific demand for such judgment does not prevent the rendition of such judgment if the proper jurisdictional facts appear and it appear that the action is against the husband and wife jointly.

### **§ 30. INFANTS.**

By reason of his immaturity and want of experience, the courts protect the infant fully, nor suffer his own acts nor the acts of other persons to prejudice his rights. Infancy is the period of a person's age from his birth until he attains the age of twenty-one years, or, if the infant be a female, until she attains the age of eighteen years.

No action shall be commenced by an infant plaintiff, except by his guardian or until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend in such action, who shall be responsible for the costs therein. [1771.]

### **§ 31. WHEN THE INFANT IS DEFENDANT HE LIKEWISE APPEARS BY GUARDIAN.**

After service and return of process against an infant defendant, the action shall not be further prosecuted until a guardian for such infant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person, who shall consent thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next

friend shall be filed with the justice; and such guardian for the defendant shall not be liable for any costs in the action. [1772.]

### § 32. ADMINISTRATORS, ETC.

The executor or administrator of an estate, the guardian of a minor, and, in fact, persons obligated with an express trust, or authorized by statute, are often compelled to come into the courts to prosecute actions on behalf of their trust or their wards. In such cases the law empowers them to bring the action in their own names.

An executor or administrator, or guardian of a minor or person of unsound mind, a trustee of an express trust, or a person authorized by statute, may sue without joining the person for whose benefit the suit is prosecuted. A trustee of an express trust within the meaning of this section, shall be construed to include a person with whom or in whose name a contract is made for the benefit of another. [180.]

When suit is brought by such administrator or executor, it is the practice to set forth in the complaint the facts of such administration, to wit, the death of the intestate; that letters of administration were issued from the superior court to the plaintiff; that the plaintiff thereupon qualified as such administrator, and that the letters of administration have not been revoked.

### § 33. ASSIGNEES AS PARTIES.

The exigencies of commerce and business have created the custom of assigning book accounts, judgment bonds and other choses in action to third persons. The action which the assignor would have on such accounts is thereby transferred to the assignee, and the latter may sue thereupon in his own name.

Any assignee or assignees of any judgment bond, specialty, book account, or other chose in action for the payment of money, by assignment in writing signed by the person authorized to make the same, may, by virtue of such assignment, sue and maintain an action or actions in his or her name, against the obligors, debtor or debtors, therein named, notwithstanding the assignor may have an interest in the thing assigned:

Provided, that any debtor may plead in defense a counterclaim or an offset, if held by him against the original owner, against the debt assigned, save that no counterclaim or offset shall be pleaded against negotiable paper assigned before due, and where the holder thereof has purchased the same in good faith and for value, and is the owner of all interest therein. [191.]

It will be noticed that the proviso permits the debtor to counterclaim or offset against the debt assigned. The assignment of such a debt, therefore, does not affect any rights which the debtor may have against the debt. In the case of negotiable instruments assigned before they are due, the holder who has purchased the same in good faith may hold the same against any counterclaim or offset on the part of the debtor. This provision is made necessary by the practices of business life, and is designed, of course, to prevent the impairment of the negotiability of such instruments.

It is not necessary in your complaint in an action upon an account which has been assigned to allege that the assignment is in writing. It may, however, be necessary to prove a written assignment upon the trial of the case.

In the assignment of a promissory note for collection or for the purpose of suing thereon, his interest therein is considered sufficient to make him the real party in interest.

A negotiable instrument indorsed after maturity is subject to any and all defenses existing between the maker and the payee, although an indorsee after maturity, taking it from one who acquired the instrument before maturity, takes free from such equities.

### § 34. PARTNERS AND CORPORATIONS AS PARTIES.

Partnerships and corporations may be sued in the firm or corporate name and may sue in such firm or corporate name. When the firm is bringing suit, it is proper to set forth in the complaint that the plaintiff is a copartnership, and if the plaintiff be a corporation, it is the practice to state in the complaint that the said corporation is duly organized and existing under and by virtue of the laws of

the state of Washington, together with a further allegation that the annual license fee last due under the law has been paid. In a suit against persons forming a copartnership, when sued as individuals composing the partnership, being particularly designated in the papers of the case, and judgment is therein obtained in the firm name, the said judgment will not, under such circumstances, be void.

### **§ 35. PERSONS SEVERALLY LIABLE AS PARTIES.**

Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all, or any of them, be included in the same action, at the option of the plaintiff. [192.]

### **§ 36. RIGHTS OF PARTIES TO INTERVENE.**

Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either party, 'or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claim of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant, and is made by a complaint setting forth the grounds upon which the intervention rests filed by leave of the court or judge on the *ex parte* motion of the party desiring to intervene. [202.]

The procedure when permission to intervene is given by the court follows:

When leave is given to intervene, a copy of the intervenor's complaint shall be served upon the parties to the action or proceedings who have not appeared, or publication of a notice of the intervention containing a brief statement of the nature of the intervenor's demand shall be made in all cases where are absent or nonresident defendants. The notice shall be published in the same manner and for the same length of time as prescribed by law for publication of summons. And the complaint shall also be served upon the attorneys

of the parties who have appeared, who may answer or demur to it as if it were an original complaint. The court shall determine upon the rights of the intervener at the same time the action is decided, and if the claim of the party intervening is not sustained, he shall pay all costs incurred by the intervention: Provided, that no intervention shall be cause for delay in the trial of an action between the original parties thereto. [203.]

### **§ 37. DEFECT OF PARTIES.**

We have seen that the general rule is that an action at law should be prosecuted in the name of the real party in interest.

### **§ 38. CORRECTING MISTAKE IN NAME.**

If it should appear that there is a mistake in the name of one of the parties to an action, the mistake may be corrected at any time. The justice should make an entry on his docket showing the correction.

### **§ 39. STRIKING ONE OF THE PLAINTIFFS OUT.**

Sometimes, when there are two or more parties plaintiff, one will be joined who has no cause of action. In that event his name may be stricken out and the proper entry made in the docket showing the ruling of the court. The costs should be taxed against the party needlessly bringing the stricken party into the case.

### **§ 40. WHEN THE WRONG DEFENDANT IS SUED.**

If there is only one defendant, and it should appear from the testimony that he is the wrong person and that some other person should have been made defendant, the name of another person cannot be substituted for that of the defendant, and the plaintiff will fail.

### **§ 41. RIGHTS OF ONE NOT MADE A PARTY.**

If, by proceeding to trial, the rights of a person not made a party plaintiff will not be prejudiced, it will not be necessary to make him a party.

The procedure generally in amending the various pleadings to omit or insert the name or names of parties plain-

tiff or defendant is to apply for leave by motion, setting forth the facts and the names. If the amended parties have not appeared in court, they must be served with due notice as if they were original parties and thus given an opportunity to defend. The justice will make the proper entries in his docket showing the rulings in the case.

## CHAPTER III.

## THE PLEADINGS.

## HOW THE PLAINTIFF PREPARES HIS CASE FOR TRIAL

- § 42. The complaint—What is meant by pleadings.
- § 43. Contents of the complaint.
- § 44. Oral pleadings.
- § 45. Pleadings for money only.
- § 46. Pleadings to be made certain.
- § 47. The parts of a complaint.
- § 48. Title.
- § 49. Parties.
- § 50. The statement of the cause of action—Plain language.
- § 51. Be certain.
- § 52. Ambiguity.
- § 53. Duplicity.
- § 54. Repugnancy.
- § 55. Evidentiary facts.
- § 56. General statements.
- § 57. Neatness.
- § 58. Joinder of causes of action.
- § 59. The prayer for relief.
- § 60. Verification.
- § 61. When pleadings take place.

### § 42. THE COMPLAINT—WHAT IS MEANT BY PLEADINGS.

The object of every step and every movement in an action at law is to cause to issue from the statements of both the plaintiff and defendant some particular point or points upon which the judge or jury may make an adjudication. Was such and such an agreement made? What was the nature of the agreement? Has the agreement been carried out or has it not? These are the vital facts which the statements should put squarely before the court, and such preliminary statements, statements other than the evidence, are generally called the pleadings. Let the pleader remember to exert his ingenuity in raising the real issue in the case; let him closely regard the controverted point and much verbiage and surplusage will be thereby avoided.

Now, it is provided that the pleadings in justice court may be either spoken or written:

**The pleadings in justice court may be oral or in writing. [1780.]**

When the justice has any considerable number of cases, as in a busy city precinct, the pleadings are usually in writing. In other cases the pleadings may take place upon the appearance of the parties unless they shall have been previously filed.

**The pleadings in the justice court shall be:**

(1) The complaint of the plaintiff, which shall state in a plain and direct manner the facts constituting the cause of action;

(2) The answer of the defendant, which may contain a denial of the complaint, or any part thereof, and also a statement, in a plain and direct manner, of any facts constituting a defense;

(3) When the answer sets up a setoff by way of defense, the reply of the plaintiff. [1779.]

The first step, then, is the complaint. The complaint means just what the word means—a complaining to the court of some wrong. The law has defined what the complaint shall contain.

#### **§ 43. CONTENTS OF THE COMPLAINT.**

**The complaint shall contain:**

(1) The title of the cause, specifying the name of the court, the name of the county in which the action is brought and the name of the parties to the action, plaintiff and defendant.

(2) A plain and concise statement of facts constituting the cause of action, without unnecessary repetition.

(3) A demand for the relief which the plaintiff claims; if the recovery of money or damages be demanded, the amount thereof shall be stated. [258.]

#### **§ 44. ORAL PLEADINGS.**

When the pleadings are oral, the substance of them shall be entered by the justice in his docket. When in writing they shall be filed in his office and a refer-

ence made to them in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended. [1786.]

#### § 45. PLEADINGS FOR MONEY ONLY.

When the cause of action, or setoff, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof, to the court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or set off. The court may, at the time of pleading, require that the original account, or instrument, be exhibited to the inspection of the adverse party, with liberty to copy the same; or if not so exhibited, may prohibit it being given in evidence. [1783.]

#### § 46. PLEADINGS TO BE MADE CERTAIN.

Either party may object to a pleading by his adversary, or to any part thereof that is not sufficiently explicit for him to understand it, or that it contains no cause of action or defense, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended; and if the party refuse to amend, the defective pleading shall be disregarded. [1786.]

#### § 47. THE PARTS OF A COMPLAINT.

The complaint is roughly divisible into five parts:

- (1) The title.
- (2) The names of the parties.
- (3) A statement of the cause of action.
- (4) The demand or prayer for relief.
- (5) The oath, or verification.

#### § 48. TITLE.

This is the venue or county and state in which the court has jurisdiction which is to try the case. It is important that the title show the name of the justice trying the cause, as:

**"In Justice's Court.**

**Before James C. Smith, Justice of the Peace, Seattle Precinct, King County, Washington."**

**§ 49. PARTIES.**

First the name of the plaintiff and then the name or names of the defendant or defendants. When the true name of a party is not known, a fictitious name may be inserted, as "John Doe Brown (whose true Christian name is to the plaintiff unknown)," or "John Doe (whose true Christian name is to the plaintiff unknown)." If the plaintiff or defendant be a corporation, the name should appear "Seattle Wire Works, a corporation." If the parties should be partners, it is proper to entitle them "James Jones and William Mitchell, copartners, doing business under the designation of Tacoma Laundry."

**§ 50. THE STATEMENT OF THE CAUSE OF ACTION—PLAIN LANGUAGE.**

Leave many syllabled words to scientific treatises, and flowery expressions to love letters. Be clear in your thinking and you will be clear in your pleading. State your case simply and effectively and only state it once. Don't keep repeating and enlarging on your troubles. If you are suing the defendant for the price of a barrel of sugar, say directly that it was sugar, that it was a barreelful, and that the agreed price was what it was. Do not go into the whole question of the origin of that sugar, how it was grown in the cane in sunny Demerara, how it was extracted from the cane, and the name of the vessel by which it was imported into the United States, and whether or not the crew of that vessel were well fed and received their wages. Remember, we are all suspicious of the story which is told hidden and secreted in a mass of irrelevant matter, and this attitude, consciously or unconsciously, is adopted by all who have to consider redundant pleadings.

**§ 51. BE CERTAIN.**

State as positively as you can the facts surrounding the transaction in question. Be particular to show the facts

of time, place, values and parties where those facts are necessary to a clear presentation of your case. When you are not certain, you may allege that the transaction took place some time within the statute of limitations, as "during the two years last past." This, however, invites your opponent to demand an itemized statement of the business, or bill of particulars as it is called, and will delay the judgment of your cause. When there are a great many items, of course, you may properly allow your adversary a bill of particulars.

#### **§ 52. AMBIGUITY.**

The effect of words that have either no definite sense or else a double one.

#### **§ 53. DUPLICITY.**

This means uniting in one count matters which really are two causes of action to support one claim of recovery.

#### **§ 54. REPUGNANCY.**

Simply statements in your cause of action which do not agree or contradict each other.

The whole effort of the pleader is to tell a straight story. With this purpose fixedly in mind you will, without being an expert pleader, be able to determine whether or not you are ambiguous or confused.

#### **§ 55. EVIDENTIARY FACTS.**

It is improper to plead in your complaint those details of a transaction which should be brought out by the evidence upon the trial of your cause. Clear your paragraphs of all such, allowing each clause in your statement to be a bare but fruitful branch which shall blossom with evidence in the proper season.

#### **§ 56. GENERAL STATEMENTS.**

When the possession of property is in dispute, allege generally the plaintiff's right and title thereto. By or against a corporation, allege its legal existence. In actions upon a contract, allege the consideration. This is

not necessary in those contracts in which the law presumes a consideration. This implied consideration operates usually in the matter of negotiable instruments.

### § 57. NEATNESS.

Not the least virtue is the neat preparation of pleadings. Each separate statement should be numbered and paragraphed as in the sample form.

### § 58. JOINDER OF CAUSES OF ACTION.

The plaintiff may unite several causes of action in the same complaint, when they all arise out of:

- (1) Contract, express or implied; or
- (2) Injuries, with or without force, to the person; or
- (3) Injuries, with or without force, to property; or
- (4) Injuries to character; or
- (5) Claims to recover personal property, with or without damages, for the withholding thereof; or
- (6) Claims against a trustee, by virtue of a contract or by operation of law.

But the causes of action, so united, must affect all the parties to the action, and not require different places of trial, and must be separately stated. [296.]

### § 59. THE PRAYER FOR RELIEF.

If the plaintiff is suing for the price of a barrel of sugar, say valued at five dollars, he will conclude his statement of the transaction by asking judgment for the five dollars, together with all the costs for filing his complaint, his witnesses, and so forth, and the statutory attorney's fee, and for such other and further relief as to the court may seem proper.

### § 60. VERIFICATION.

Every complaint, answer, or reply shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true. The verification shall be oral or in writing, in conformity with the pleading verified. [1784.]

This is the oath which seals the complaint. The complaint is insufficient without such verification.

**GENERAL FORM.**

**The Complaint in Action upon a Promissory Note.**

**In Justice's Court.**

**Before R. R. George, Justice of the Peace, in and for  
Seattle Precinct, King County, State of Washing-  
ton.**

**No. 41,144.**

<b>Nathaniel Grumble,</b>	}
<b>Plaintiff,</b>	
<b>vs.</b>	
<b>Jonathan Quibble,</b>	
<b>Defendant.</b>	}

**COMPLAINT.**

**Comes now the plaintiff and for cause of action  
against the defendant alleges:**

**I.**

**That plaintiff and defendant are residents of Seattle  
Precinct, King County, state of Washington;**

**II.**

**That on the 1st day of August, 1911, at Seattle, King  
County, state of Washington, the defendant, Jonathan  
Quibble, made his certain promissory note in writing,  
bearing date the 1st day of August; the said note being  
in words and figures as follows, to wit: [make an exact  
copy of the note], and then and there delivered the said  
note to the plaintiff herein;**

**III.**

**That the plaintiff is the holder and owner of said note;  
that the same has not been paid, nor any part thereof.**

**Wherefore the plaintiff prays that he have judgment  
against the defendant in the sum of [principal of note],  
together with interest thereon amounting to [insert here  
interest], together with his costs and disbursements in  
this suit incurred.**

**NATHANIEL GRUMBLE,  
Plaintiff.**

State of Washington,  
County of King,—ss.

Nathaniel Grumble, being first duly sworn, on oath deposes and says, that he is the plaintiff in the above-entitled action, that he has read the foregoing complaint, knows the contents thereof and believes the same to be true.

**NATHANIEL GRUMBLE.**

### VERIFICATIONS.

State of Washington,  
County of King,—ss.

John Borne, being first duly sworn, says that he is the plaintiff in the above-entitled action; that he has read [or heard read] the foregoing complaint, knows the contents thereof, and believes the same to be true.

**JOHN BORNE.**

Subscribed and sworn to before me this 3d day of April, 1912.

**WM. SEAL,**

Notary Public in and for the State of Washington, Residing at Seattle.

### VERIFICATION BY PLAINTIFF'S ATTORNEY.

State of Washington,  
County of King,—ss.

James Calf, being first duly sworn, says that he is the attorney for the plaintiff in the above-entitled action; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true; and that plaintiff is not present to make this verification.

**JAMES CALF.**

Subscribed and sworn to before me this 3d day of May, 1911.

**WM. SEAL,**

Notary Public in and for the State of Washington, Residing at Seattle.

## § 61. WHEN PLEADINGS TAKE PLACE.

The pleadings in justice's court shall take place upon the appearance of the parties, unless they shall have been previously filed, or unless the justice shall, for good cause shown, allow a longer time than the time of appearance. [1778.]

## CHAPTER IV.

## TAKING THE CAUSE INTO COURT.

- § 62. The notice.
- § 63. The service of complaint and notice.
- § 64. Time of service.
- § 65. By whom service may be made—By appointed persons.
- § 66. By publication.
- § 67. How weekly publication is made.
- § 68. Sheriffs, constables, and other persons.
- § 69. Manner of service.
- § 70. Certified copy.
- § 71. Service when there are two or more defendants.
- § 72. The return of process and proof of service—Penalty.
- § 73. How service is proved.
- § 74. Rules adopted by King County justices.
- § 75. Other methods of commencing actions.
- § 76. Action commenced by summons.
- § 77. Action commenced by complaint and notice.
- § 78. The defendant's answer, etc.
- § 79. When the defendant is in default.
- § 80. The dismissal of the action.
- § 81. The defendant's appearance.
- § 82. The special appearance.
- § 83. The continuance.
- § 84. Continuance by agreement of the parties.
- § 85. Amendments generally.
- § 86. The answer of the defendant.
- § 87. The denial.
- § 88. Denial of knowledge or information.
- § 89. Undenied allegations admittedly true.
- § 90. General rules governing the preceding pleadings—Amendments.
- § 91. Filing amended pleadings.
- § 92. Variance between the pleadings and the proof.
- § 93. Immaterial variance.
- § 94. Practice in case of variance.
- § 95. Failure to prove.
- § 96. Amendments generally.
- § 97. Setoffs.
- § 98. Counterclaims.
- § 99. Setoffs generally.
- § 100. Allowing setoff.
- § 101. The plaintiff's reply.

You have now prepared your complaint and it has been verified, or sworn to. Now is the time to begin putting the agency of the law into operation; in other words, you are ready to bring the cause into court.

## § 62. THE NOTICE.

Any person desiring to commence an action before a justice of the peace, by the service of a complaint and notice, can do so by filing his complaint verified by his own oath or that of his agent or attorney with the justice, and when such complaint is so filed, upon payment of his fees if demanded, the justice shall attach thereto a notice, which shall be substantially as follows:

### FORM.

State of Washington,  
..... County,—ss.

To ..... (In the name of the state of Washington).

You are hereby notified to be and appear at my office in ..... on the .... day of ....., 19...., at the hour of .... M., to answer to the foregoing complaint or judgment will be taken against you as confessed and the prayer of the plaintiff granted.

.....,  
Dated ....., 19.... [1759.] J. P.

The practice generally is for the attorney or the person desiring to commence an action in the justice court to obtain from the clerk of the court a blank printed notice, which blanks are supplied free of charge. The pleader will fill in the name of the justice and the names of the parties, leaving the date of the return day blank and leaving blank the line for the justice's signature. He will draw his complaint with an original and two carbon copies thereof, the original to be filed with the clerk of the court, one copy to be served upon the defendant and the plaintiff retaining the last copy for his own use and reference.

You now have the original complaint attached to the original notice blank. You also have a copy of the complaint attached to a copy of the notice. These two sets you will take to the clerk of the court, leaving your third copy in your office files.

You present your original complaint with the notice attached to the clerk and will pay him the filing fee of one dollar.

The clerk then puts the next consecutive number on the original complaint, which is the number under which it will be hereafter distinguished in all the records. You should copy that number onto the copy of the complaint and notice which you have brought with you.

The next thing is for the clerk to give you the return day, or the day on which the defendant must make his appearance and answer in the cause. If it is a busy justice court with a great many cases awaiting deliberation, the return day may be some weeks off. When the clerk fills in on the original notice the date of return, you copy that date into your copy of the notice.

The clerk will then affix the justice's signature to the original notice and you will enter the signature on your copy of the notice.

You receive a receipt for your one dollar filing fee and depart, leaving the original complaint and notice in the files of the court and taking with you the copy of the complaint and notice, which are now ready for service on the defendant.

Of course, it is not necessary for you to take that copy into court when you file your original; you may get the number of the case and the return day from the clerk and enter them on your copy when you get back to the office. You will guard against error and confusion, however, by following the method I have outlined to you above.

What the clerk does with the original you have left with him is considered under the duties of the justice of the peace; but as we are following the case step by step to judgment and execution, we will consider next

### **§ 63. THE SERVICE OF COMPLAINT AND NOTICE.**

Let us assume that you filed your original complaint and notice with the court on the first day of April and that the return day has been set on the fifteenth day of the same month.

**§ 64. TIME OF SERVICE.**

The complaint and notice shall be served at least five days before the time mentioned in the notice for the defendant to appear and answer the complaint, by delivering to the defendant, or leaving at his place of abode, with some person over twelve years of age, a true copy of the complaint and notice, certified by the officer or person making the service to be such. [1761.]

**§ 65. BY WHOM SERVICE MAY BE MADE—BY APPOINTED PERSONS.**

Any justice may, by appointment in writing, authorize any person other than the parties to the proceeding, or action, to serve any subpoena, summons, or notice and complaint issued by such justice; and any such person making such service shall return on such process or paper, in writing, the time and manner of service, and shall sign his name to such return, and be entitled to like fees for making such service as a sheriff or constable, and shall indorse his fees for service thereon: Provided, it shall not be lawful for any justice to issue process or papers to any person but a regularly qualified sheriff or constable, in any precinct where such officers reside, unless from sickness or some other cause said sheriff or constable is not able to serve the same: Provided further, that it shall be lawful for notice and complaint or summons in a civil action in the justice court to be served by any person over the age of twenty-one years and not a party to the action in which the summons or notice and complaint shall be issued without previous appointment by the justice. [1764.]

**§ 66. BY PUBLICATION.**

In case personal service cannot be had by reason of the absence of the defendant from the county in which the action is sought to be commenced, it shall be proper to publish the summons or notice with a brief statement of the object and prayer of the claim or complaint, in some weekly newspaper published in the county wherein the action is commenced; or if there is no paper published in such county, then in some newspaper published in the nearest adjoining county, which notice shall be published not less than once a week for three weeks prior to the time fixed for the hearing of the cause, which shall not be less than four weeks from

the first publication of said notice. Said notice may be substantially as follows:

### FORM.

State of Washington,  
County of .....,—ss.

In Justice's Court, ....., Justice.

To .....

You are hereby notified that ..... has filed a complaint [or claim, as the case may be] against you in said court which will come on to be heard at my office in ....., in ..... County, Wash., on the .... day of ..... A. D. 19...., at the hour of .... o'clock .... M., and unless you appear and then and there answer, the same will be taken as confessed and the demand of the plaintiff granted. The object and demand of said claim [or complaint, as the case may be] is [here insert a brief statement].

Complaint filed ....., J. P.  
A. D. 19.... [1766.]

### SERVICE BY PUBLICATION.

Affidavit for Publication.

In Justice's Court, etc.

[Case.]

James Words, being first duly sworn, says that he is the plaintiff in the above-entitled action; that the defendant cannot after due diligence be found within the said county of King; that a summons was duly issued against said defendant and placed in the hands of Henry Badge, a constable of said county, for service, but has been returned by the said Henry Badge with his indorsement thereon; that defendant could not be found in said county and that no place of his abode could be found in said county; which summons so indorsed is now on file in said court.

That a cause of action exists against the said defendant in favor of the plaintiff, as appears by the complaint of the plaintiff on file in this cause.

JAMES WORDS.

Subscribed and sworn, etc.

**ORDER TO PUBLISH SUMMONS.**

In Justice's Court, etc.

[Case.]

The affidavit of James Words, the plaintiff in the above-entitled action, having been filed herein, and it appearing from the said affidavit that the plaintiff has a just cause of action against the defendant herein, and it further appearing from such affidavit, and from the return upon the complaint and notice [or summons] herein as well, that personal service cannot be had upon the defendant, for the reason that he cannot be found within the said county and has no known place of abode therein:

It is hereby ordered that the service of the summons in this action be made upon the said defendant, requiring him to appear before the undersigned, one of the justices of the peace in and for Seattle Precinct, King County, on the 3d day of January, 1912, at 9:30 o'clock in the forenoon, at my office, in room 602, Prefontaine Building, in the city of Seattle, King County, to answer to James Words, the plaintiff, in a civil action, by publication of said summons in the "Broken Bugle," a weekly newspaper published in said King County, once in each week for three consecutive weeks.

Given under my hand this 12th day of December, 1911.

R. R. GEORGE,  
Justice of the Peace.

**SUMMONS FOR PUBLICATION.**

[Case.]

To Vernon Deaf, Greeting:

In the name of the state of Washington, you are hereby notified that James Words has filed a complaint against you in said court, which will come on to be heard at my office, in room 602, Prefontaine Building, in the city of Seattle, King County, state of Washington, on the 3d day of January, 1912, at the hour of 9:30 o'clock in the forenoon of said day, and unless you appear and then and there answer, the same will be taken as confessed, and the demand of the plaintiff granted.

The object of said complaint is to recover [state generally the demand].

Complaint filed December 12, 1911.

R. R. GEORGE,  
Justice of the Peace.

**§ 67. HOW WEEKLY PUBLICATION IS MADE.**

The publication of legal notices required by law, or by an order of a judge or court, to be published in a newspaper once in each week for a specified number of weeks, shall be made on the day of each week in which such newspaper is published. [253.]

**FORM.****AFFIDAVIT OF PUBLICATION.**

State of Washington, etc.

I, James Inker, on oath declare that I am the publisher [printer, or foreman] of the "Broken Bugle," a weekly newspaper published in King County, Washington, and of general circulation in said county; and that the summons, of which the annexed is a printed copy, was published in said newspaper three times consecutively for three successive weeks; that the first publication thereof was made on the .... day of ....., and the last publication was made on the .... day of .....

.....,  
Signature.

**§ 68. SHERIFFS, CONSTABLES, AND OTHER PERSONS.**

Sheriffs and constables are officers authorized by law to serve process or complaint and notices, yet it is provided that service may be made of summons or notice and complaint as follows:

..... but a summons or notice and complaint may be served by any citizen of the state of Washington over the age of twenty-one years and not a party to the action.

**§ 69. MANNER OF SERVICE.**

The summons or notice and complaint shall be served by delivering a copy thereof, as follows:

1. If the action be against any county in this state, to the county auditor.
2. If against any town or incorporated city in the state, to the mayor thereof;—
3. If against a school district, to the clerk thereof;

4. If against a railroad corporation, to any station, freight, ticket or other agent thereof within the county;

5. If against a corporation owning or operating sleeping-cars, or hotel cars, to any person having charge of any of its cars or any agent found within the county;

6. If against an insurance company, to any agent, authorized by such company to solicit insurance within this state.

7. If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor within this state;

8. If the suit be against a company or corporation other than those designated in the preceding subdivisions of this section, to the president or other head of the company or corporation, secretary, cashier or managing agent thereof;

9. If the suit be against a foreign corporation or nonresident joint stock company or association doing business within this state, to any agent, cashier or secretary thereof;

10. If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, guardian, or if there be none within this state, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed, if such there be;

11. If against any person for whom a guardian has been appointed for any cause, then to such guardian;

12. Whenever any domestic or foreign corporation, which has been doing business in this state, has been placed in the hands of a receiver and the receiver is in possession of any of the property or assets of such corporation, service of all process upon such corporation may be made upon the receiver thereof;

13. In all other cases, to the defendant personally, or by leaving a copy of the summons or complaint and notice at his place of abode as specified in sections three hundred and fifty-four and three hundred and fifty-six. Service made in the modes provided in this section shall be taken and held to be personal service. [226.]

**§ 70. CERTIFIED COPY.**

The defendant must be served with a certified copy of the complaint and notice, and the certification of the person serving such complaint and notice should appear on the defendant's copy.

**§ 71. SERVICE WHEN THERE ARE TWO OR MORE DEFENDANTS.**

The following provisions apply to cases where there are two or more defendants, and also when summons is served on one or more but not on all of them:

1. If the action is against defendants jointly indebted upon a contract, he (the plaintiff) may proceed against the defendants served unless the court otherwise directs; and if he recovers judgment it may be entered against all the defendants thus jointly indebted so far only as it may be enforced against the joint property of all and the separate property of the defendants served;

2. If the action is against defendants severally liable he may proceed against the defendants served in the same manner as if they were the only defendants;

3. Though all of the defendants may have been served with the summons, judgment may be taken against any of them severally, when the plaintiff would be entitled to judgment against such defendants if the action had been against them alone. [236.]

**§ 72. THE RETURN OF PROCESS AND PROOF OF SERVICE—PENALTY.**

The server, whether he be sheriff, constable or unofficial but qualified person, having served the defendant in accordance with law, or publication of notice having been made in some weekly newspaper, the agent making such service makes his return as follows:

Every constable or sheriff serving any process or complaint and notice, shall return thereon in writing the time, manner and place of service, and indorse thereon the legal fees therefor, and shall sign his name to such return. [1763.]

If any officer, without showing good cause therefor, fail to execute any process to him delivered, and make

due return thereof, or make a false return, such officer, for every such offense, shall pay to the party injured ten dollars, and all damage such party may have sustained by reason thereof, to be recovered in a civil action. [1776.]

### § 73. HOW SERVICE IS PROVED.

When the person to whom process or complaint and notice has been delivered, to be served upon the defendant, shall have made his service as set forth in the above statutes, he shall make proof of the fact of such service in the following ways:

1. When made by a constable or sheriff, his return signed by him and indorsed on the paper or process;

2. When made by any person other than such officer, then by the affidavit of the person making the service. [1765.]

3. Proof of service in case of publication shall be the affidavit of the publisher, printer, foreman or principal clerk, showing the same, and [1767.]

4. The written admission of the defendant, his agent or attorney, indorsed upon any summons, complaint and notice, or other paper, shall be complete proof of service in any case. [1768.]

### FORM.

#### RETURN OF SERVICE BY OFFICER.

State of Washington, etc.

I hereby certify and return that the within summons [or complaint and notice] came to my hands on the 4th day of December, 1911, and that thereafter on the 4th day of December, 1911, I served the same by delivering to and leaving with Jonathan Quibble, the defendant named therein, at the city of Seattle, in said county, a full, true and correct copy of said summons [or complaint and notice], duly certified by me to be such.

Dated this 5th day of December, 1911.

HENRY BADGE,  
Constable.

Service .....	\$ .60
Copy .....	.20
Mileage 2 miles.....	.20
<b>Total.....</b>	<b>\$1.00</b>

**RETURN OF APPOINTED SERVER.**

State of Washington, etc.

H. Willing, of King County, state of Washington, being first duly sworn, says that the within summons [or complaint and notice] came to his hands on the 4th day of December, 1911, and that thereafter and on the 4th day of December, 1911, I served the same by delivering to and leaving with Jonathan Quibble, the defendant therein named, at the city of Seattle, in said county, a full, true and correct copy of said summons [or complaint and notice] duly certified by me to be such; and that his fees for the said service are as follows, to wit: Service on one defendant, 60c, and six miles' travel, 60c.

H. WILLING.

**RETURN BY OFFICER WHEN DEFENDANT NOT SERVED.**

State of Washington, etc.

I hereby certify and return that the within summons [notice and complaint] came to my hands on the 4th day of December, 1911, and that thereafter on the 4th day of December, 1911, I served the same by leaving a true copy thereof, certified by me to be such, at his place of abode in said county with one Annie Board, a person over twelve years of age, defendant not being found.

Dated this 5th day of December, 1911.

HENRY BADGE,  
Constable.

**Fees:**

Service .....	\$ .60
Copying .....	.40
Mileage 2 miles.....	.20
Total.....	<hr/> \$1.20

**RETURN OF SERVICE—NOT FOUND.**

State of Washington, etc.

I hereby certify that the within summons [or complaint and notice] came to my hands on the 4th day of December, 1911, and that I made diligent search and inquiry for the within named defendant, Jonathan Quibble, in the county of King and state of Washington, but was unable to find him, and could not ascertain, after diligent search and inquiry, that he had a place

of abode in said county, and for that reason I return this summons not served.

Dated this 4th day of December, 1911.

HENRY BADGE,  
Constable.

### **SERVICE ON CORPORATION AND RAILROAD.**

Add: "By delivering a true copy thereof, certified by me to be such, to Thomas Mint, the president [or what his official title may be] thereof."

For a municipal corporation add: "The mayor of said city [or what the proper officer may be]."

For a railroad: "Percy Punch, the acting station agent of such railroad company, the defendant, in said county and state, etc."

### **§ 74. RULES ADOPTED BY KING COUNTY JUSTICES.**

The following rules will be rigorously enforced on and after November 1, 1911, in the justice courts of Seattle Precinct, King County, Washington:

#### **I.**

Parties must be ready in all cases set for trial or cases will be dismissed. Exceptions will be made where the parties or their attorneys are engaged in a trial in the superior court, in which event an affidavit to that effect must be filed on or before 9:30 A. M. on the day on which the said cases are set for trial.

#### **II.**

In all cases in which there is no appearance by the plaintiff or his attorney at 9:30 A. M. or within one hour thereafter, an order of dismissal will be entered.

#### **III.**

Proof of service in all default cases must be on file by 10:30 A. M. on the return day of the notice, or a dismissal will be entered.

### **§ 75. OTHER METHODS OF COMMENCING ACTIONS.**

Civil actions in the several justices' courts of this state may be instituted either by the voluntary appearance and agreement of the parties, by the service of a summons, or by the service upon the defendant of a true copy of the complaint and notice, which notice

shall be attached to the copy of the complaint, and cite the defendant to be and appear before the justice at the time and place therein specified, which shall not be less than six nor more than twenty days from the date of filing the complaint. [1755.]

## § 76. ACTION COMMENCED BY SUMMONS.

A party desiring to commence an action before a justice of the peace for the recovery of a debt by summons shall file his claim with the justice of the peace, verified by his own oath, or that of his agent or attorney; and thereupon the justice of the peace shall, on payment of his fees, if demanded, issue a summons to the opposite party, which summons shall be in the following form, or as nearly as the case will admit, viz.:

### FORM.

The State of Washington,  
..... County,—ss.

To the Sheriff or Any Constable of Said County.

In the name of the state of Washington, you are hereby commanded to summon ..... if he [or they] be found in your county, to be and appear before me at ..... on .... day of ..... at .... o'clock A. M. [or P. M.], to answer the complaint of ..... for a failure to pay him a certain demand, amounting to ..... dollars and ..... cents, upon [here state briefly the nature of the claim]; and of this writ make due service and return.

Given under my hand this .... day of .....,  
19.....

.....,  
Justice of the Peace.

And the summons shall specify a certain place, day, and hour for the appearance and answer of the defendant, not less than six nor more than twenty days from the date of filing plaintiff's claim with the justice, which summons shall be served at least five days before the time of trial mentioned therein, and shall be served by the officer delivering to the defendant, or leaving at his place of abode, with some person over twelve years of age, a true copy of such summons, certified by the officer to be such. [1758.]

The general method of commencing an action in the justice court is by complaint and notice; the complaint

being prepared as set forth under the heading of the "Complaint."

## § 77. ACTION COMMENCED BY COMPLAINT AND NOTICE.

Any person desiring to commence an action before a justice of the peace by the service of a complaint and notice can do so by filing his complaint, verified by his own oath or that of his agent or attorney, with the justice, and when such complaint is so filed, upon payment of his fees, if demanded, the justice shall attach thereto a notice which shall be substantially as follows:

### FORM.

The State of Washington,  
..... County,—ss.

To .....

In the name of the state of Washington, you are hereby notified to be and appear at my office in ..... on the .... day of ....., 19...., at the hour of .... M., to answer the foregoing complaint, or judgment will be taken against you as confessed, and the prayer of the plaintiff granted.

Dated ..... 19....

.....  
J. P. [1759.]

## § 78. THE DEFENDANT'S ANSWER, ETC.

The complaint has been drawn and filed, the copy and notice have been served on the defendant in one of the ways specified in the preceding chapter, and it is now time for the defendant to meet the attack.

## § 79. WHEN THE DEFENDANT IS IN DEFAULT.

First of all, we will assume that the defendant refuses to obey the notice and decides to allow the plaintiff's action to take its course. He refuses to make any appearance or serve and file any pleadings in the case. He is therefore liable to have judgment rendered against him as confessed.

When the defendant fails to appear and plead at the time specified in the notice, or within one hour thereafter, judgment shall be given as follows:—

1. When the defendant has been served with a true copy of the complaint, judgment shall be given without further evidence for the sum specified therein;

2. In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just, but in no case exceed the amount specified in the complaint. [1858.]

In taking the defendant's default, particular notice should be paid to the rules adopted by the King County justices set forth in the preceding chapter.

## FORM.

### JUDGMENT ON DEFAULT.

August 1st, 1910, at 9:30 o'clock A. M., the case being called, plaintiff appeared, but defendant did not appear within one hour after the time specified in the summons. Plaintiff testified in his own behalf under oath. Case rested. Whereupon, it is adjudged this 1st day of August, 1910, that the plaintiff recover of the defendant the sum of ten dollars, his damages as confessed [or proven] and costs of this action incurred, taxed at \$7 and \$5 attorney's fees, making a total judgment against the defendant of twenty-two dollars.

J P.

### § 80. THE DISMISSAL OF THE ACTION.

If the dispute has been settled before the return day, the case may be dismissed. Usually in the settlement of the case the plaintiff will demand his costs, that is, the filing fee of one dollar; the cost of service, treated of under the head of "Costs," and the statutory attorney's fee of five dollars.

Judgment that the action be dismissed, without prejudice to a new action, may be entered, with costs, in the following cases:—

1. When the plaintiff voluntarily dismisses the action before it is finally submitted;

2. When he fails to appear at the time specified in the notice, upon continuance, or within one hour thereafter;

3. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial, it shall be deemed waived, and shall not be cause of reversal. [857.]

In every case other than those wherein judgment of dismissal is rendered, the judgment shall be rendered on the merits.

### FORM.

#### JUDGMENT ON DISMISSAL.

[State here that plaintiff has failed to appear, or that he has dismissed the case, etc.]

Wherefore, it is adjudged this 1st day of August, 1910, that this action be dismissed without prejudice to the plaintiff to bring a new action for the same cause, and that the defendant have and recover of the plaintiff his costs in this action taxed at seven dollars.

J P.

#### § 81. THE DEFENDANT'S APPEARANCE.

Let us assume, however, that the defendant decides to contest the action. On the return day, he will make what is called the appearance in person or by attorney. Previously to the return date, however, he will be said to appear in the action when he answers or demurs or gives the plaintiff written notice of his appearance.

A defendant appears in an action when he answers, demurs, makes an application for an order therein, or gives the plaintiff written notice of his appearance. After appearance a defendant is entitled to notice of all subsequent proceedings; but when a defendant has not appeared, service of notice or papers in the ordinary proceedings in an action need not be made upon him. Every such appearance made in an action shall be deemed a general appearance, unless the defendant in making the same states that the same is a general appearance. [241.]

The parties shall be entitled to one hour in which to make their appearance after the time mentioned in the summons or notice for appearance, but shall not be required to remain longer than that time, unless both parties appear, and the justice, being present, is actually engaged in the trial of another action or proceeding; in such case he may postpone the time of appearance until the close of such trial. [1773.]

#### § 82. THE SPECIAL APPEARANCE

Is an appearance made to take advantage of any defect or defects; as, for instance, the want of jurisdiction. This is an

appearance that must be made carefully and with the distinct understanding that it is a special appearance, and must be properly made as to form, or it will react on the party to give the court jurisdiction.

The defendant having appeared generally, the justice will then set the case down for trial, the time of trial being determined by the number of cases ahead of any given one.

### § 83. THE CONTINUANCE.

The necessity of procuring certain evidence may compel the defendant to ask that the cause be continued until such time as he can get the desired witness into court or else take his deposition. Or there may be other good cause for continuance, in which case a continuance fee of twenty-five cents shall be paid to the clerk of the court. But the limit of such continuance shall be sixty days. A continuance for more than sixty days will devest the justice of jurisdiction.

When the pleadings of the parties shall have taken place the justice shall, upon the application of either party if the defendant be not under arrest, and sufficient cause be shown on oath, continue the case for any time not exceeding sixty days. If the continuance be on account of absence of testimony, it shall be for such reasonable time as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice; and in all other respects shall be governed by the law applicable to continuances in the superior court. [1847.]

### § 84. CONTINUANCE BY AGREEMENT OF THE PARTIES.

A continuance for more than sixty days will not operate to devest the justice of jurisdiction, if the continuance is made on the agreement of the parties and the docket so shows.

### § 85. AMENDMENTS GENERALLY.

The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omissions in the allegations or denials necessary to support the action or defense, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that a

continuance is necessary to the adverse party in consequence of such amendment, a continuance shall be granted. The court may also, in its discretion, require as a condition of an amendment the payment of costs to the adverse party. [1788.]

## § 86. THE ANSWER OF THE DEFENDANT.

We have seen that the pleadings in the justice court shall consist of the complaint, the answer and the reply. Let us consider, now, the answer of the defendant.

Remember that the pleadings may be either spoken or written, so that, if you are the defendant, it is not necessary for you to write out your answer. You may come into court on the return day and simply say that the answer is a general denial. When you have any facts which it is necessary to set forth at length by way of setoff or counterclaim, it is expedient to make the answer then in writing.

**The answer of the defendant which may contain a denial of the complaint, or any part thereof, and also a statement in a plain and direct manner of any facts constituting a defense. [1779.]**

## § 87. THE DENIAL.

The denial may go to each and every allegation of the plaintiff's complaint, thus putting the plaintiff on his proof of each separate statement. This is a denial of the complaint; or the denial may be specifically made to some material allegation or allegations of the complaint.

The common form of the denial is as follows:

**"The defendant, for answer to the complaint of the plaintiff, denies each and every allegation thereof."**

## § 88. DENIAL OF KNOWLEDGE OR INFORMATION.

The defendant may answer an allegation by denying that he has knowledge or information sufficient to form a belief concerning the truth thereof. [1782.]

The answer must be verified by the defendant or his attorney in form similar to the verification of the complaint.

### **§ 89. UNDENIED ALLEGATIONS ADMITTEDLY TRUE.**

It is a rule founded upon reason and logic that those material allegations of the complaint which the defendant does not deny are by his silence admitted as true.

Every material allegation of the complaint, or relating to a setoff in the answer not denied by the pleading of the adverse party, shall, on the trial, be taken to be true; except that when a defendant who has not been served with a copy of the complaint fails to appear and answer, the plaintiff cannot recover without proving his case. [1785.]

### **§ 90. GENERAL RULES GOVERNING THE PRECEDING PLEADINGS—AMENDMENTS.**

The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiencies or omissions in the allegations or denials necessary to support the action or defense, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that a continuance is necessary to the adverse party in consequence of such amendment, a continuance shall be granted. The court may also, in its discretion, require as a condition of an amendment the payment of costs to the adverse party.

### **§ 91. FILING AMENDED PLEADINGS.**

When leave has been granted to amend the pleadings, the next step is to draw a new complaint or pleading, as the case may be, and filing that. The case will then be determined upon the new and not upon the old pleading.

When any pleading or proceeding is amended before trial, mere clerical errors excepted, it shall be done by filing a new pleading, to be called the amended complaint, or otherwise, as the case may be. Such amended pleading shall be complete in itself, without reference to the original, or any preceding amended one. [304.]

### **§ 92. VARIANCE BETWEEN THE PLEADINGS AND THE PROOF.**

It frequently happens that the pleader in drawing his pleadings will not have understood thoroughly some of the

details of the cause, with the result that when the witness is placed on the stand his evidence does not coincide with his sworn complaint. The aim of the court being to ascertain the truth, and it being more likely that the story told by the witness under examination and personally in the courtroom is true as against some difference in his pleadings, the effect will not be to brand the whole complaint or answer or whatever the pleading as wholly false; but it is held not to be material. This rule is modified to the extent that the adverse party may not be prejudiced or misled by such variance. That is to say, he is not to be told one story in the complaint and then when he has prepared his whole case to meet that attack, find on the trial that the plaintiff departs entirely from the pleadings and leaves the defendant without adequate reply. In such a case the defendant is properly granted a continuance to meet the new change of attack. Or, if that be not done, and it be really more than a case of variance, it shall be deemed a failure of proof.

#### **§ 93. IMMATERIAL VARIANCE.**

A variance between the proof on the trial and the allegations in a pleading shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby. [1787.]

#### **§ 94. PRACTICE IN CASE OF VARIANCE.**

When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment without costs. [300.]

#### **§ 95. FAILURE TO PROVE.**

When, however, the allegation of the cause of action or defense, to which the proof is directed, is not proved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof. [301.]

#### **§ 96. AMENDMENTS GENERALLY.**

The statute covering amendments generally is as follows:

The court may, in furtherance of justice, and on such terms as may be proper, amend any pleadings or pro-

ceedings by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, and may upon like terms, enlarge the time for answer or demurrer. The court may likewise, upon affidavit showing good cause therefor, after notice to the adverse party, allow upon such terms as may be just, an amendment to any pleadings or proceedings in other particulars, and may upon like terms, allow an answer to be made after the time limited by this code, and may upon such terms as may be just, and upon payment of costs, relieve a party, or his legal representatives, from a judgment, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect. [303.]

### § 97. SETOFFS.

In many cases the pleadings are not so simple that they can be mere matters of affirmation and denial. Frequently a case will grow out of complicated transactions between the plaintiff and the defendant wherein both parties have been indebted each to the other. The plaintiff may be suing the defendant on a promissory note of twenty-five dollars and the defendant may be the plaintiff's creditor on an open account to the amount of fifty dollars. The defendant, admitting the note, will ask cancellation and judgment for twenty-five dollars and costs.

To entitle a defendant to any setoff he may have against the plaintiff, he must allege the same in his answer; and the statutes regulating setoffs in the superior court shall in all respects be applicable to setoffs in a justice's court, if the amount claimed to be set off, after deducting the amount found due the plaintiff, be within the jurisdiction of the justice of the peace; judgment may, in like manner, be rendered by the justice, in favor of the defendant, for the balance found due the plaintiff. [1789.]

### § 98. COUNTERCLAIMS.

When the defendant has a cause of action which springs from the transaction on which the plaintiff founds his action, and in which said action the defendant might himself ask for affirmative relief, he is said to have a counterclaim.

However, the terms "setoff" and "counterclaim," although technically distinct, are often used interchangeably.

The counterclaim . . . must be one existing in favor of a defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of the following causes of action:

1. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action;

2. In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action. [265.]

## § 99. SETOFFS GENERALLY.

The following is a general statement:

The defendant in a civil action upon a contract expressed or implied may set off any demand of a like nature against the plaintiff in interest which existed and belonged to him at the time of the commencement of the suit. And in all such actions, other than upon a negotiable promissory note or bill of exchange negotiated in good faith, and without notice before due, which has been assigned to the plaintiff, he may also set off a demand of a like nature existing against the person to whom he was originally liable, or any assignee prior to the plaintiff of such contract, provided such demand existed at the time of the assignment thereof, and belonging to the defendant in good faith before notice of such assignment, and was such a demand as might have been set off against such person to whom he was originally liable, or such assignee while the contract belonged to him. [266.]

## § 100. ALLOWING SETOFF.

When the setoff of the defendant proved shall exceed the claim of the plaintiff, and such excess in amount exceed the jurisdiction of a justice of the peace, the court shall allow such amount as is necessary to cancel the plaintiff's claim, and give the defendant a judgment for costs; but in such case the court shall not render judgment for any further sum in favor of the defendant. [1861.]

**§ 101. THE PLAINTIFF'S REPLY.**

If the defendant in his answer should allege a setoff or counterclaim such as we have seen above, the plaintiff shall reply thereto.

**3. When the answer sets up a setoff by way of defense, the reply of the plaintiff. [1779.]**

This is, of course, only reasonable. If the defendant in his answer only denied the allegations of the complaint, an issue would thereupon be reached, and there would be no need of further response from the plaintiff. It would simply be a case of "yes" and "no," and which one is true. But if the defendant in his answer introduces the new matter of a setoff, the plaintiff is properly given opportunity to deny the new allegations. The new matter may be demurred to, and further, judgment may be rendered against the party failing to plead to new matter.

The court shall establish the rules prescribing the time in which pleadings subsequent to the complaint shall be filed.

**FORM.****REPLY.****[Court and Cause.]**

Comes now the plaintiff, and replying to the answer of the defendant denies each and every allegation, matter and statement in said answer contained and each and every portion thereof.

Wherefore plaintiff prays judgment according to the demand of the complaint.

**J. S. SMITH,**  
**Attorney for Plaintiff.**

## CHAPTER V.

### THE TRIAL.

- § 102. The venue or place of trial.
- § 103. Venue of actions.
- § 104. Change of venue.
- § 105. Same as in superior court.
- § 106. Only one change allowed.
- § 107. Venue when private corporation is defendant.
- § 108. Venue in other cases.
- § 109. Manner of proceeding on change of venue.
- § 110. Change of venue on affidavit.
- § 111. Cost bond of nonresident plaintiff.
- § 112. The demurrer.
- § 113. Grounds of demurrer.
- § 114. Bill of particulars.

The cause is now ready to be tried. The parties to the trial are the plaintiff and defendant, in person or by their attorneys, the witnesses, the judge and the jury, if a jury has been demanded.

#### § 102. THE VENUE OR PLACE OF TRIAL.

The venue means the place from which the jury comes who are to try the case; or the county where the cause of action arose, or the precinct in which the court sits before whom the case is brought.

#### § 103. VENUE OF ACTIONS.

All civil actions commenced in a justice court against a defendant or defendants residing in a city or town of more than three thousand inhabitants shall be brought in the justice court of the precinct in said city or town in which one or more of such defendants reside. [1756.]

The jurisdiction of justices of the peace in all civil actions, except as provided in the preceding section, shall be coextensive with the limits of the county in which they are elected or appointed, and no other or greater, but every justice of the peace shall continue

to reside and perform all the duties of his office in the precinct for which he was elected or appointed during his continuance in office. [1757.]

#### § 104. CHANGE OF VENUE.

It may be that the defendant has reason to believe that in the court before whom the plaintiff has brought him he cannot have the fair and impartial trial which is guaranteed to all men. A change, then, of the place of trial must be granted upon the following grounds:

The court may, on motion, in the following cases, change the place of trial, when it appears by affidavit or other satisfactory proof:

1. That there is reason to believe that an impartial trial cannot be had therein; or

2. That the convenience of witnesses or the ends of justice would be forwarded by the change; or

3. That from any cause the justice is disqualified; which disqualification exists in either of the following cases: In an action or proceeding to which he is a party, or in which he is interested; when he is related to either party by consanguinity or affinity within the third degree; when he has been of counsel for either party in the action or proceeding. [209.]

#### § 105. SAME AS IN SUPERIOR COURT.

Change of venue may be allowed for the same causes for which they are allowed in the superior court. [1775.]

#### § 106. ONLY ONE CHANGE ALLOWED.

Neither party shall be entitled to more than one change of the place of trial, except for causes not in existence when the first change was allowed. [210.]

#### § 107. VENUE WHEN PRIVATE CORPORATION IS DEFENDANT.

An action against a corporation may be brought in any county where the corporation has an office for the transaction of business, or any person resides upon whom process may be served against such corporation, unless otherwise provided in the code. [206.]

**§ 108. VENUE IN OTHER CASES.**

In all other cases the action must be tried in the county in which the defendants, or some of them, reside at the time of the commencement of the action, or may be served with process. [207.]

**§ 109. MANNER OF PROCEEDING ON CHANGE OF VENUE.**

The justice should show in his docket that an affidavit has been made for change of venue, that it has been filed, and an order entered for the transfer of the cause to another justice. The new justice should then receive a transcript of all proceedings up to this point, together with all the papers and records in the action, so that he will be fully advised in the premises.

**§ 110. CHANGE OF VENUE ON AFFIDAVIT.**

If, previous to the commencement of any trial before a justice of the peace, the defendant, his attorney or agent, shall make and file with the justice an affidavit that the deponent believes that the defendant cannot have an impartial trial before such justice, it shall be the duty of the justice to forthwith transmit all papers and documents belonging to the case to the nearest justice of the peace in the same county, who is not of kin to either party, sick, absent from the county, or interested in the result of the action, either as counsel or otherwise. The justice to whom such papers and documents are so transmitted shall proceed as if the suit had been instituted before him. Distance, as contemplated by this section, shall mean to be by the nearest traveled route. The costs of such change of venue shall abide the result of the suit. [1774.]

**§ 111. COST BOND OF NONRESIDENT PLAINTIFF.**

If the defendant prevail against the plaintiff, his interest is to see that he secures the costs which the judgment may award him against the plaintiff. When the plaintiff is a non-resident of the county, the defendant may require security for the costs as follows:

Whenever the plaintiff is a nonresident of the county, the justice may require of him security for the costs in a sum not exceeding fifty dollars at the time of the

commencement of the action, provided, however, that after an action has been commenced by a nonresident plaintiff and no security given for costs, the defendant may require such security by motion; when allowed all proceedings shall be stayed until such security shall be given. [1777.]

## § 112. THE DEMURRER.

“A demurrer is to rest or pause. It is an allegation that, admitting the facts of the preceding pleading to be true as stated by the party making it, it has yet shown no cause why the party demurring should be compelled by the court to proceed further. Its object is to sweep away a defective pleading, by raising issues of law upon the facts stated in the pleading demurred to.” [3 Cyc. 270.]

## § 113. GROUNDS OF DEMURRER.

The code provides the following grounds of demurrer in this state:

The defendant may demur to the complaint when it shall appear upon the face thereof either,—

1. That the court has no jurisdiction of the person of the defendant or of the subject matter of the action;
2. That the plaintiff has no legal capacity to sue; or
3. That there is another action pending between the same parties for the same cause; or
4. That there is a defect of parties, plaintiff or defendant; or
5. That several causes of action have been improperly united;
6. That the complaint does not state facts sufficient to constitute a cause of action;
7. That the action has not been commenced within the time limited by law. [259.]

In the superior court service is made of a written demurrer; in the justice court the demurrer may be made orally or in writing.

## § 114. THE BILL OF PARTICULARS.

This is a detailed or itemized statement of the separate parts of an account; as where the plaintiff sues for groceries supplied to the defendant in various quantities of a total

value, say, of forty dollars, the defendant may demand a sworn statement setting forth the quantity of each item and the price thereof. Unless it appears that the complaint is sufficiently explicit, the court will grant the defendant a bill of particulars. This demand is usually made, of course, on or before the return day, as it is necessary to the defendant's proper defense. [284.]

### **FORM.**

#### **DEMAND FOR BILL OF PARTICULARS.**

**[Court and Cause.]**

**To William Jones,**

**Attorney for Plaintiff, Samuel Smith.**

**This is to notify you that the defendant hereby demands a bill of particulars, setting forth the items of the account whereon plaintiff is maintaining this action**

**Dated November 1, 1910.**

**THOMAS JUGGLER,  
Attorney for Defendant.**

## CHAPTER VI.

### THE JURY TRIAL.

- § 115. Those exempt from jury service.
- § 116. Those who are qualified to be jurors.
- § 117. Demanding a jury—Number—Fees.
- § 118. Selecting the jury.
- § 119. Summoning the jury.
- § 120. Personal service.
- § 121. The juror's oath.
- § 122. The verdict.
- § 123. When the jury disagrees.
- § 124. Juror failing to answer summons.
- § 125. Challenging, argument, etc.

Trial by jury is one of the oldest institutions of our legal system. Either party may demand a trial by jury, in the justice courts as well as in the superior courts. The general difference is that a number less than twelve may sit as jurors in justice courts; six being the number for the smaller court. As a rule, it is a duty incumbent on all qualified citizens to serve as jurors when properly summoned. By the nature of their occupations, however, some men are properly exempted from this duty. A list of those exempt follows:

#### § 115. THOSE EXEMPT FROM JURY SERVICE.

Civil officers of the United States.

Civil and judicial officers of the state.

Attorneys at law.

Ministers of the gospel or priests.

School teachers.

Practicing physicians.

Locomotive engineers.

Active members of fire department.

Those who have served twice as jurors in two years.

Persons over sixty years of age. [97]

#### § 116. THOSE WHO ARE QUALIFIED TO BE JURORS.

The general run of men are qualified, however, as will be seen from the following:

A person is not competent to act as a juror unless he be—

1. An elector of the state of Washington;
2. A male inhabitant of the county in which he is returned, and who has been an inhabitant thereof for the year next preceding the time he is drawn or called;
3. Over twenty-one years of age;
4. In the possession of his natural faculties and of sound mind;
5. Able to read and write the English language;
6. A person who has been convicted of a felony is not competent to act as a juror. [94.]

### § 117. DEMANDING A JURY—NUMBER—FEES.

The time to demand a jury is after the defendant has appeared in the action; the party demanding the jury paying to the justice the sum of six dollars as fees for the jurors.

After the appearance of the defendant, and before the justice shall proceed to inquire into the merits of the cause, either party may demand a jury to try the action, which jury shall be composed of six good and lawful men having the qualifications of jurors in the superior court of the same county unless the parties shall agree upon a less number; provided, that the party demanding the jury shall first pay to the justice the sum of six dollars, which shall be paid over by the justice to the jury before they are discharged, and said amount shall be taxed as costs against the losing party. [1849.]

The effect of demanding a jury is to continue the cause until the time fixed for the return of the jury.

When a jury is demanded, the trial of the case must be adjourned until the time fixed for the return of the jury; if neither party desire an adjournment the time must be determined by the justice and must be on the same day or within the next two days. The jury must be immediately selected as herein provided. [1850.]

### § 118. SELECTING THE JURY.

In the superior court the jury is drawn from boxes containing a quantity of cards with the names of qualified persons on them, the drawing being done usually by a man blindfolded. As he draws out the cards, the attendant calls the name thereon and makes a note of the list for summon-

ing later. The procedure is more direct in the justice court; the judge writing in a panel the names of eighteen citizens of the county, both parties striking off names alternately until but six remain, which said six are then summoned for service.

The justice shall write in a panel the names of eighteen persons, citizens of the county, from which the defendant, his agent or attorney, must strike one name; the plaintiff, his agent or attorney, one; and so on alternately until each party shall have stricken six names, and the remaining six names shall constitute the jury to try such case; and if either party neglect or refuse to aid in striking the jury as aforesaid, the justice shall strike the name in behalf of such party. [1851.]

### § 119. SUMMONING THE JURY.

The six final names having been reached by the process of striking as above, the jurors are then summoned; the said summons being served upon each member personally.

The justice shall thereupon issue a summons for the jury, in which the following form shall be observed in substance:

#### FORM.

The State of Washington,  
County of . . . . .,—ss.

The State of Washington to the Sheriff or Any Constable of Said County:

You are hereby commanded to summon . . . . . to appear before me at my office in . . . . . precinct, said county, on the . . . . day of . . . . ., A. D. 19 . . . ., at . . . . o'clock in the . . . . noon, to serve as jurors in a case pending before me, then and there to be tried. And this they shall in no wise omit: And have you then and there this writ, with your doings thereon.

Given under my hand this the . . . . day of . . . . ., A. D. . . . .

A. B.,  
Justice of the Peace. [1852.]

### § 120. PERSONAL SERVICE.

The summons must be personally served on the jurors.

Which said summons shall be personally served upon the persons named, and the same shall be returned, with

the names of the persons summoned, at the time appointed for the trial of the cause. [1852.]

### § 121. THE JUROR'S OATH.

The jurors having been selected, the whole six are usually required to rise together and each holding up his right hand are then sworn.

When the jury is selected, the justice shall administer to them an oath or affirmation, well and truly to try the cause. [1853.]

#### FORM.

##### Of Juror at Challenge:

You do solemnly swear that you will true answers make to all such questions as shall be put to you, touching your qualifications as a juror in the cause about to be tried between Nathaniel Grumble, plaintiff, and Jonathan Quibble, defendant. So help you God.

##### Of Jurors Impaneled:

You, and each of you, do solemnly swear that you will well and truly try the matter in issue between Nathaniel Grumble, plaintiff, and Jonathan Quibble, defendant, and a true verdict give according to the evidence as given you on the trial. So help you God.

##### Of Bailiff in Charge of Jurors:

You do solemnly swear that you will keep this jury together in some suitable place, without food or drink, except water, unless ordered by this court; that you will suffer no communication to be made to them, nor make any yourself about the cause, unless by order of this court, except to ask them whether they have agreed upon their verdict; that you will permit no person to overhear any conversation or discussion they may have while deliberating upon their verdict; and that you will not, before their verdict is rendered to this court, communicate to any person the state of their deliberations or the verdict agreed upon. So help you God.

### OATH TO JURORS IN CRIMINAL CAUSE.

You and each of you do solemnly swear that you will well and truly try the issue in this action between the state of Washington and the defendant, and a true verdict give according to the evidence given you in court and the laws of this state. So help you God.

**§ 122. THE VERDICT.**

When the jury have agreed on their verdict, they shall deliver the same to the justice publicly, who shall enter it on his docket.

**FORM.****VERDICTS.**

(In Criminal Action.)

[Court and Cause.]

We, the jury, in the case of the state of Washington, plaintiff, against William Wilfull, defendant, find the defendant guilty as charged [or not guilty].

.....,  
Foreman.

For Defendant:

[Court and Cause.]

We, the jury, find for the defendant [or plaintiff].

On Counterclaim or Offset:

We, the jury, find for the defendant on his counterclaim, in the sum of eighty dollars.

.....,  
Foreman.

For Plaintiff:

[Court and Cause.]

We, the jury, find for plaintiff, and assess his damages at seventy-five dollars.

.....,  
Foreman.

For Defendant on Replevin:

[Court and Cause.]

We, the jury, find for defendant, and we find the value of the property in dispute to be eighty dollars, and that defendant is entitled to the return thereof from plaintiff. We also find for defendant in the sum of fifty dollars damages for the taking and detention of said property by the plaintiff herein.

.....,  
Foreman.

For Plaintiff on Replevin:

[Court and Cause.]

We, the jury, find for plaintiff, and find the value of the property in dispute to be eighty dollars, and that

the plaintiff is entitled to the return thereof from the defendant. We also find for plaintiff in the sum of fifty dollars damages for the taking and detention of said property by defendant herein.

.....,  
Foreman.

### § 123. WHEN THE JURY DISAGREES.

When the jury cannot agree, they may be discharged and a new venire issued.

Whenever a justice shall be satisfied that a jury sworn in any civil cause before him, having been out a reasonable time, cannot agree on their verdict, he may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment on the evidence before him, or upon such other evidence as they may produce. [1855.]

### § 124. JUROR FAILING TO ANSWER SUMMONS.

Every person who shall be duly summoned as a juror, and shall not appear nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars. [1856.]

### § 125. CHALLENGING, ARGUMENT, ETC.

When the jury shall have come into court, they are sworn to answer truly all questions properly propounded to them touching their qualifications to act as jurors (see "Qualifications," § 116). When the answer shows that the juror under examination is not qualified to act as juror, he may be challenged by either party, the challenge being said to be for "cause" as opposed to the "peremptory" challenge, or the challenge without cause assigned. The places vacant on the jury by challenge may be filled by the constable, who may select bystanders or persons in the court. All being then found qualified jurors, they are sworn to try the cause and the jury is said to be impaneled.

At the conclusion of the evidence, counsel for both parties may address the jury in argument.

The right of argument by counsel is as well established as the right of a party to be represented by counsel. Argument of a case is as much a part of the trial as the hearing of evidence. [18 Cent. Law Journal, 363.]

## CHAPTER VII.

### THE WITNESSES.

- § 126. Who may be witnesses.
- § 127. Persons not qualified to be witnesses.
- § 128. Disqualifications of witnesses by reason of relationship, etc.
- § 129. Witnesses within twenty miles.
- § 130. Service.
- § 131. Compelling adverse party to testify.
- § 132. Effect of party refusing to testify.
- § 133. Party examined on his own behalf.
- § 134. Witness failing to appear—Liability for damages.
- § 135. Writ of attachment for witness.
- § 136. Writ to be served same as warrant.
- § 137. Depositions.
- § 138. Time of taking depositions.
- § 139. Deposition taken out of state.
- § 140. Depositions to be taken on notice.
- § 141. Use of depositions.
- § 142. Service of notice by publication.
- § 143. Deposition to be written and certified.
- § 144. Sealing and transmitting deposition.
- § 145. Use on trial.

The justice of the peace has authority to compel the attendance of persons as witnesses in his court within an area of twenty miles. The witness must be served with subpoena—a command, under penalty, for the person to attend; a penalty which may be enforced for the nonattendance of the person commanded.

#### § 126. WHO MAY BE WITNESSES.

Every person of sound mind, suitable age and discretion, except as hereinafter provided, may be a witness in any action or proceeding. [1210.]

It will be seen that there is no strict age requirement for a witness. As long as the witness is of years of discretion and able to appreciate the solemnity of an oath, he is qualified, even though he may be quite a young child.

The fact that the witness may be one of the parties to the action does not, of necessity, disqualify him from testifying.

No person offered as a witness shall be excluded from giving evidence by reason of his interest in the event of the action, as a party thereto or otherwise, but such interest may be shown to affect his credibility: Provided, however, that in an action or proceeding where the adverse party sues or defends as executor, administrator or legal representative of any deceased person, or as deriving right or title by, through or from any deceased person, or as the guardian or conservator of the estate of any insane person, or of any minor under the age of fourteen (14) years, then a party in interest or to the record, shall not be admitted to testify in his own behalf as to any transaction had by him with, or any statement made to him by any such deceased or insane person, or by any such minor under the age of fourteen (14) years: Provided, further, that this exclusion shall not apply to parties of record who sue or defend in a representative or fiduciary capacity, and who have no other or further interest in the action. [1211.]

#### **§ 127. PERSONS NOT QUALIFIED TO BE WITNESSES.**

Insanity, intoxication, and being under the age of ten years will disqualify a witness. The provision against a child under ten years is conditional upon the child's incapacity of receiving true impressions of the facts in question or of relating them truly. Many facts, though, a child under ten years of age may be able to appreciate and relate, and generally he is allowed to take the stand.

The following persons shall not be competent to testify:—

1. Those who are of unsound mind, or intoxicated at the time of their production for examination, and
2. Children under ten years of age, who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly. [1213.]

#### **§ 128. DISQUALIFICATIONS OF WITNESSES BY REASON OF RELATIONSHIP, ETC.**

Public policy requires that the relationship existing between certain persons shall be a bar to those persons acting as witnesses. There are confidential relations between people in

some cases which the law will not violate, as husband and wife, lawyer and client, priest and parishioner.

The following persons shall not be examined as witnesses:

1. A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either, during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

2. An attorney or counselor shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

3. A clergyman or priest shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

4. A regular physician or surgeon shall not, without the consent of his patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him to prescribe or act for the patient.

5. A public officer shall not be examined as a witness as to communications made to him in official confidence, when the public interest would suffer by the disclosure. [1214.]

## § 129. WITNESSES WITHIN TWENTY MILES.

A subpoena issued by a justice of the peace shall be valid to compel the attendance of a witness in the justice's court, if such witness be within twenty miles of the place of trial. [1898.]

## § 130. SERVICE.

A person over eighteen years of age may serve the subpoena.

A subpoena may be served by any person above the age of eighteen years, by reading it to the witness, or by delivering to him a copy at his usual place of abode. [1899.]

**FORM.**  
**SUBPOENA.**

State of Washington,  
County of . . . . .,—ss.

To . . . . .:

In the name of the state of Washington, you are hereby required to appear before the undersigned, one of the justices of the peace in and for the said county, on the . . . day of . . . . ., 19. . . . , at . . . o'clock in the . . . noon, at his office in . . . . ., to give evidence in a certain cause, then and there to be tried, between A B, plaintiff, and C D, defendant, on the part of [the plaintiff or defendant as the case may be].

Given under my hand this . . . day of . . . . ., 19. . . . .

J P,  
Justice of the Peace.

**SUBPOENA DUCES TECUM.**

(The following should be added to the above form when it is desired to have the witness bring in books or documents material to the issue:)

And you, the said Timothy See, are further required to bring with you [the books, papers or documents desired] and all other papers which you have in your possession touching the matter in dispute.

Given under my hand, etc.

**§ 131. COMPELLING ADVERSE PARTY TO TESTIFY.**

A party to the action may be examined as a witness, at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination, as any other witness, to testify at the trial or appear and have his deposition taken. [1903.]

The examination of a party thus taker may be rebutted by adverse testimony. [1904.]

**§ 132. EFFECT OF PARTY REFUSING TO TESTIFY.**

When a party refuses to testify, his complaint, answer or pleadings may be stricken and judgment taken against him.

If a party refuse to attend and testify at the trial, or give his deposition before trial, "or give his deposi-

tion before trial when required," his complaint, answer or reply, may be stricken out and judgment taken against him. [1905.]

### § 133. PARTY EXAMINED ON HIS OWN BEHALF.

If the adverse party examine his opponent, the opponent may then be examined on any matter pertinent to the issue. If he testify, however, to new matter, his adversary may likewise be examined.

A party examined by an adverse party may be examined on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to qualify or explain his answer thereto, or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness, and shall be so received. [1906.]

### § 134. WITNESS FAILING TO APPEAR—LIABILITY FOR DAMAGES.

The witness being necessary to the proper maintenance of the action, the party who subpoenas him may have and recover damages from him for his failure to appear and testify, provided fees and mileage were tendered or paid the witness at the time of service.

Every person subpoenaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpoenaed, for all damages which such party may have sustained by reason of his nonappearance: Provided, that such witness had the fees allowed for mileage and one day's attendance paid, or tendered him, in advance if demanded by him at the time of the service. [1902.]

### § 135. WRIT OF ATTACHMENT FOR WITNESS.

Attachment is the process whereby the justice may compel the attendance in court of any witness properly subpoenaed.

Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person, duly subpoenaed to appear before him in an action, shall have failed, without a just cause, to attend as a witness in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall

make oath that the testimony of such witness is material, the justice shall have the power to issue an attachment to compel the attendance of such witness: Provided, that no attachment shall issue against a witness in any civil action, unless his fees for mileage and one day's attendance have been tendered or paid in advance, if previously demanded by such witness from the person serving the subpoena. [1900.]

It will be seen from this that where a witness is not altogether willing to come in and testify, the safest way is to make the tender of one day's fees and his mileage.

### **§ 136. WRIT TO BE SERVED SAME AS WARRANT.**

The defaulting witness must pay the costs of the service of the writ of attachment and for the issuing thereof, unless he had good cause for not coming to court.

Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same shall be paid by the person against whom the same was issued, unless he show reasonable cause, to the satisfaction of the justice, for his omission to attend; in which case the party requiring such attachment shall pay all costs. [1901.]

### **§ 137. DEPOSITIONS.**

When circumstances prevent the personal attendance of a witness in court, his deposition may be taken. The deposition is a written statement of his testimony and is usually in the form of questions and cross-questions, just as though he were being examined face to face. The plaintiff will submit his list of questions for the answers to be written thereon and the defendant will cross-question on those questions. Depositions may be generally taken before persons authorized to administer oaths.

Either party, in an action pending before a justice of the peace, may cause the deposition of a witness therein to be taken, when such witness resides, or is about to go more than twenty miles from the place of trial, or is so sick, infirm, or aged, as to make it probable that he will not be able to attend at the trial. [1907.]

The deposition is taken, certified and returned in the same manner as are depositions for the superior court.

The notice shall be served, and the deposition taken, certified and returned, according to the law regulating the taking of depositions to be read in the superior court. [1908.]

### **§ 138. TIME OF TAKING DEPOSITIONS.**

Either party may commence taking testimony by depositions at any time after service of summons upon the defendant. [1232.]

### **§ 139. DEPOSITION TAKEN OUT OF STATE.**

When the witness is out of the state a commission may issue from the superior court for the taking of his testimony.

Depositions may be taken out of the state by a judge, justice or chancellor or clerk of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town, or any person authorized by a special commission from any court of this state. [1239.]

### **§ 140. DEPOSITIONS TO BE TAKEN ON NOTICE.**

Previous notice of the time and place of taking depositions must be served on the adverse party or his attorney.

Either party may have the deposition of a witness taken in this state before any judge of the superior court, justice of the peace, clerk of the supreme or superior court, mayor of a city, or notary public, by serving on the adverse party or his attorney previous notice of the time and place of examination. The notice shall be served such time before the time when the deposition is to be taken as to allow the adverse party sufficient time by the usual route of travel to attend, and three days for preparation, exclusive of the day of service, and the examination may, if so stated in the notice, be adjourned from day to day. The notice shall specify the action or proceeding, the name of the court or tribunal in which the deposition is to be used, and the time and place of the taking of deposition. It shall be served upon the adverse party, his agent or attorney of record, or be left at his usual place of abode. [1233.]

A shorter time of notice may be prescribed by the court.

The court, or a judge thereof, or in an action or proceeding before a justice of the peace, the justice may, upon sufficient cause being shown by affidavit, prescribe a shorter time for notice than that specified in the last preceding section. A copy of the order shortening time must be served with the notice. [1234.]

#### § 141. USE OF DEPOSITIONS.

Such deposition may be used by either party upon the trial, or other proceeding against any party giving or receiving the notice, subject to all legal exceptions, to the competency or credibility of the witness, or the manner of taking the deposition. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was taken at the time of the examination. It shall be the duty of the person taking the deposition to propound to the witness every question proposed by either party, and to note all objections to the form of any interrogatory, and when any interrogatory is objected to on account of form, unless the form is amended and the objection waived, he shall write after the question and before the answer the words "objected to," and when any witness declines to answer a question on the ground that it will criminate himself, that fact shall also be noted after the question if written down. The deposition may be taken in the form of a narrative, or by question and answer, or partly in either form, as either party present at the examination shall require. When taken by question and answer, the officer shall first write down the question and then the answer, as nearly as may be in the language of the witness; but when the deposition is read to the witness previous to signing it, he shall be permitted to amend his answer to any question or any part of his deposition; such amendment, however, unless both parties shall otherwise agree, shall not be made by way of interlining or erasing, but shall be added at the end of the deposition under the title "amendment by the witness," and such amendment shall intelligibly refer to the part so amended. [1244.]

When the adverse party is not present and has no attorney of record on whom to make notice, notice of the taking of

deposition may be had by publication for three consecutive weeks.

#### § 142. SERVICE OF NOTICE BY PUBLICATION.

When the party against whom the deposition is to be read is absent from or a nonresident of the state, and has no agent or attorney of record therein, he may be notified of the taking of the deposition or the application for a commission by publication. The publication must be made three consecutive weeks in some newspaper printed in the county where the action or proceeding is pending, if there be any printed in such county, and if not, in some newspaper printed in this state, of general circulation in that county. The publication must contain all that is required in the written or printed notice, and may be proved in the manner prescribed in case of the publication of summons. [1241.]

#### § 143. DEPOSITION TO BE WRITTEN AND CERTIFIED.

The deposition shall be written by the officer taking the same, or by the witness, or by some disinterested person in the presence and under the direction of such officer. When completed it shall be carefully read to or by the witness, corrected if desired, and subscribed by him. If taken upon notice it shall be certified by the officer substantially as follows:

State of Washington,  
County of .....,—ss.

I, A B, justice of the peace in and for said county (or judge, clerk, etc., as the case may be), do hereby certify that the above deposition was taken before me and reduced to writing by myself (or witness as the case may be) at .... in said county, on the .... day of ....., 19...., at .... o'clock, in pursuance of notice hereto annexed; that the above-named witness, before examination was sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to (or by) said witness, and then subscribed by him.

A B, Justice of the Peace.

Dated at ..... the .... day of ....., 19....

If the deposition be taken upon a commission the commissioner shall certify it in substantially the same

manner, and annex to it the commission and interrogatories. [1242.]

#### § 144. SEALING AND TRANSMITTING DEPOSITION.

The deposition, whether taken upon notice or upon a commission, shall be inclosed in a sealed envelope by the officer taking the same and directed to the clerk of the court, arbitrators, referee or justice of the peace before whom the action is pending, or to such persons as the parties in writing may agree upon, and either delivered to the clerk of the court or other person, or transmitted through the mail or by some private person. [1243.]

#### § 145. USE ON TRIAL.

The justice shall allow every deposition taken, certified and returned according to law, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally before him, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice that the witness, whose deposition is so offered:

1. Is dead, or resides more than twenty miles from the place of trial; or

2. Is unable, or cannot safely attend before the justice, on account of sickness, age, or other bodily infirmity;

3. That he has gone more than twenty miles from the place of trial without the consent or collusion of the party offering the deposition. [1909.]

## CHAPTER VIII.

## EXAMINATION OF WITNESSES.

- § 146. The direct examination.
- § 147. Cross-examination.
- § 148. Redirect examination.
- § 149. Leading questions.
- § 150. Impeaching a witness.
- § 151. Refreshing the witness' memory.
- § 152. Objections to questions.

As outlined in the statute, the plaintiff first presents his evidence to the court. The plaintiff, competent to be a witness in his own behalf, let us say, will take the stand first and answer the questions which are propounded to him by his attorney. When the attorney is satisfied that the plaintiff's complaint is fully stated, he yields to the defendant's attorney, who then cross-examines the witness upon the matters to which he has just testified. The defendant should confine his cross-examining questions to those points which have been brought out by the plaintiff. He must not seek on cross-examination to present the defendant's defense; his attention is properly directed to skillfully ascertaining and, if possible, demonstrating any falsehood or inconsistency in the plaintiff's story. The defendant is guaranteed by law and the practice plenty of opportunity to build his defense by taking the stand when his turn comes and telling his side under the sympathetic questioning of his own counsel, subject also to cross-examination by the plaintiff. So with each witness until the whole trouble is presented, more or less clearly, to the justice's understanding.

## FORM.

## OATHS.

## Of Witness:

You do solemnly swear that the evidence you shall give in the cause now being heard between Nathaniel

Grumble, plaintiff, and Jonathan Quibble, defendant, shall be the truth, the whole truth, and nothing but the truth. So help you God.

To which the witness replies, "I do."

Of Interpreter:

You do solemnly swear that you will justly, truly, and impartially interpret to Otto Forin the oath about to be administered to him; and the questions which may be asked him, and the answers that he shall give to such questions, relative to the cause now being heard before this court. So help you God.

#### § 146. THE DIRECT EXAMINATION.

This examination of a witness by the party calling him is known as the direct examination, and, as we have seen, is sympathetically conducted with a view to drawing out the whole story.

#### § 147. CROSS-EXAMINATION

Is the questioning by the adverse party, as we have seen, and may be followed by

#### § 148. REDIRECT EXAMINATION,

Which is an examination by the party calling the witness of matters brought out beneath the cross-examination of the opposing party.

#### § 149. LEADING QUESTIONS.

The leading question is a question which suggests to the witness the answer which the examiner desires him to return. Other forms of leading questions are sometimes distinguished from each other, unnecessarily, I venture to say, for the sum of it all is that a leading question is one propounded to produce a certain answer, no matter whether the form of propounding is obviously suggestive or conceals a fact beneath the form of a question which the propounder wishes the witness to simply admit or deny. The leading question is not permitted in the direct examination of a witness, but considerable latitude is allowed on cross-examination.

**§ 150. IMPEACHING A WITNESS.**

This is to call his testimony untrue, not necessarily intentional falsehood, for often a witness may be honestly mistaken and his testimony shown to be inconsistent with the story told under direct examination, or inconsistent with statements made out of court concerning the matter.

**§ 151. REFRESHING THE WITNESS' MEMORY.**

When the transaction as to which the witness may be testifying is involved, as in a matter of numerous small accounts of different dates and different sums, the memory is often hazy, and when such is the case the witness may use memoranda to bring the matters back to mind. His counsel must show, however, certain important things; as, for instance, he should ask the witness when the memorandum in question was made, seeking thereby to show that the memorandum was made at or near the time of the original transaction. Two or three simple questions should suffice to bring this out. It may be that the memorandum is in the witness' handwriting and he knew it to be correct when he made it, or it may be that he saw somebody else make the memorandum at the time of the transaction and that he knew that it was correct.

**§ 152. OBJECTIONS TO QUESTIONS.**

Opposing counsel has the right of objecting to questions as follows:

To the form of the question; that it is leading, etc.

That the matter is irrelevant, incompetent and immaterial.

That the answer would incriminate the witness.

That the examiner is improperly impeaching his own witness.

## CHAPTER IX.

### THE JUDGMENT.

- § 153. Dismissal.
- § 154. Judgment by default.
- § 155. The costs.
- § 156. When defendant tenders judgment and costs.
- § 157. The judgment lien.
- § 158. The transcript of judgment.
- § 159. What the transcript contains.
- § 160. Entering the transcript.
- § 161. Property in another county.

The plaintiff has submitted his case and the defendant has finished his. The court has been the judge of the law and the facts under the following authority:

Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly. [1848.]

And now the time has come for the justice to say which party shall prevail. His judgment is the final determination of the rights of the parties as far as his court is concerned; the right of appeal, of course, existing for either party which considers itself aggrieved by the judgment. The judgment should be entered in the docket in a civil case within three days after the close of the trial. If it be a criminal case, the defendant is either discharged or committed, as the case may be; if the trial be by jury, the justice shall immediately render his decision thereon.

Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be entered immediately after the close of the trial, if the defendant has been arrested and is still in custody; in other cases it shall be entered within three days after the close of the trial. [1859.]

There are two peculiar forms of judgment aside from the usual judgment upon a submitted case, and those two forms are the judgment of nonsuit and the judgment by default.

Such judgments carry the costs to the nonsuited or defaulting party.

### § 153. DISMISSAL.

Judgment that the action be dismissed without prejudice to a new action, may be entered, with costs, in the following cases:—

1. When the plaintiff voluntarily dismisses the action before it is finally submitted.

2. When he fails to appear at the time specified in the notice, upon continuance, or within one hour thereafter.

3. When it is objected at the trial, and appears by the evidence that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial, it shall be deemed waived, and shall not be cause of reversal. [1857.]

### § 154. JUDGMENT BY DEFAULT.

When the defendant fails to appear and plead at the time specified in the notice, or within one hour thereafter, judgment shall be given as follows:

1. When the defendant has been served with a true copy of the complaint, judgment shall be given without further evidence for the sum specified therein;

2. In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just but in no case exceed the amount specified in the complaint. [1858.]

Thus the failure of the plaintiff to appear within one hour of the appointed time is cause for a nonsuit, and the same failure to act on the part of the defendant is cause for default judgment.

If the plaintiff comes in and the defendant is not there, he waits until the justice calls the title of the cause from his calendar, when he informs the court that personal service was had on the defendant. At the end of one hour he may then move for a judgment by default, which shall be accordingly rendered.

If the defendant is in court and the plaintiff does not come in within the hour, the defendant may thereupon move the court for judgment of nonsuit, which shall be rendered accordingly. It should be noticed, however, that when the defendant obtains the judgment of nonsuit, it does not operate to debar the plaintiff bringing a new suit for the same cause; it will operate sometimes to the extent that the justice shall require the plaintiff to pay the defendant's costs in the non-suited action before hearing the new cause.

### **FORM.**

#### **JUDGMENT FOR PLAINTIFF.**

The jury by their verdict [or the court] having found for the plaintiff and assessing his damages at thirty dollars: It is adjudged, this 30th day of May, 1912, that the plaintiff recover of the defendant the sum of thirty dollars damages, and the costs of this action, taxed at \$7, and \$5 as attorney's fees, making a total judgment, in favor of plaintiff and against defendant, of forty-two dollars.

**J P.**

#### **JUDGMENT FOR DEFENDANT.**

The jury by their verdict [or the court] having found for the defendant and against plaintiff: Therefore, it is adjudged, this 30th day of May, 1911, that the defendant recover of the plaintiff the sum of eight dollars, his costs as taxed, and \$5 attorney's fees, amounting in all to thirteen dollars.

**J P.**

#### **JUDGMENT ON COUNTERCLAIM.**

The jury having found [or the court] that the defendant is indebted to the plaintiff in the sum of \$15 alleged in the complaint, and that the plaintiff is indebted to the defendant in the sum of \$30 as alleged in defendant's counterclaim: Therefore, it is adjudged, this 1st day of August, 1910, that the defendant recover of the plaintiff the sum of \$15, and the costs of this action, taxed at \$7, and \$5 attorney's fees, amounting in all to twenty-seven dollars.

**J P.**

**§ 155. THE COSTS.**

We have seen that the plaintiff has spent one dollar for filing his complaint and to this must be added the cost of serving the notice and complaint, if any, and, in addition, if plaintiff has been represented by counsel, the law allows a five dollar attorney's fee; all of which costs are added to the judgment rendered for the plaintiff. In like manner the defendant, if he prevail, is allowed his costs, as attorney's and witnesses' fees. The costs include witnesses' fees.

When the prevailing party is entitled to recover costs in a civil action before a justice of the peace, the justice shall add the amount thereof to the judgment; in case of failure of the plaintiff to recover or of dismissal of the action, the justice shall enter up judgment in favor of the defendant for the amount of his costs; and in case any party so entitled to costs is represented in the action by an attorney, the justice shall include an attorney's fee of five dollars as part of the costs. [1862.]

**§ 156. WHEN DEFENDANT TENDERS JUDGMENT AND COSTS.**

The defendant may think that he owes but a part of the bill the plaintiff is suing on. He will, therefore, tender in writing an offer allowing judgment to be taken against him for that amount and tendering what costs have accrued to that time. If he loses, and the plaintiff recover more than the tendered judgment, the defendant cannot draw that money out of the registry of the court, but it is turned over to the plaintiff.

If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with costs then accrued; but if he do not accept such offer before the trial, and fail to recover on the trial of the action, a sum greater than the offer, such plaintiff shall not recover any costs that may accrue after he shall have been notified of the offer of the defendant, but such costs shall be adjudged against him, and if he recover, deducted from his recovery. But the offer and failure to accept it shall not be

given in evidence to affect the recovery, otherwise than as to costs, as above provided. [1860.]

### § 157. THE JUDGMENT LIEN.

What is the judgment worth to the prevailing party after it is secured? Well, if the loser has any real estate, the judgment becomes a lien thereon for a period of five years, but such lien does not commence until the lien laws have been complied with. When the law has been complied with, then the property is subject to be sold to satisfy the judgment in the same manner as judgments rendered in the superior court. The enforcement of judgments against personal property will be treated of later.

### § 158. THE TRANSCRIPT OF JUDGMENT.

The prevailing party, if he wishes to make the judgment a lien on the debtor's property, must secure a transcript, or abstract, of the proceedings in the justice court and must file the same with the clerk of the county, paying, generally, a fee of seventy-five cents for such filing.

The real estate of any judgment debtor and such as he may acquire, shall be held and bound to satisfy any judgment of a justice of the peace for the period of five years from the day on which said judgment was rendered, and such judgments shall be a lien thereupon to commence from the time of the filing and indexing of a duly certified transcript or abstract of such judgment, as provided by this chapter, with the county clerk of the county in which said real estate is situated. [450.]

### § 159. WHAT THE TRANSCRIPT CONTAINS.

An abstract of judgment as provided for in this chapter shall contain:—

1. The name of the party or parties in whose favor the judgment was rendered;
2. The name of the party or parties against whom the judgment was rendered;
3. The date of the rendition of the judgment;
4. The amount for which the judgment was rendered, and in the following manner, viz.: Principal, \$..... interest, \$ ....., costs, \$ .....; total, \$ .....

A transcript of a judgment of a justice of the peace provided for by this chapter shall contain an exact copy of the judgment from the justice's docket. [451.]

#### § 160. ENTERING THE TRANSCRIPT.

The county clerk shall enter such transcript in his execution docket, where whoever is interested may consult the record and ascertain the liens of this character which may be against certain property.

It shall be the duty of the county clerk to enter in his execution docket any duly certified abstract or transcript of any judgment of any of the courts mentioned in this chapter, and he shall index the same in the same manner as judgments originally rendered in the superior court of the county of which he is clerk. [453.]

#### § 161. PROPERTY IN ANOTHER COUNTY.

When the judgment debtor does not possess goods or chattels in the county of the judgment to satisfy the judgment but has some in another county, transcript is transferred to a justice in the county where the property is, who may issue execution thereon.

If the defendant have not goods and chattels in the county in which judgment was rendered sufficient to satisfy the execution, the justice before whom such judgment may be shall, at the request of the party entitled, make out a certified transcript of the same, which may be delivered to a justice in any other county, who shall make an entry thereof in his docket, and issue execution thereon for the amount of the judgment, or such part as shall be unsatisfied, with costs as in other cases.

## CHAPTER X.

### THE APPEAL.

- § 162. The amount in controversy.
- § 163. How the appeal is taken.
- § 164. Appeal stays proceedings.
- § 165. Execution recalled by appeal.
- § 166. The transcript.
- § 167. The same pleadings as in lower court.
- § 168. Superior court may compel transcript.
- § 169. Defective bond—How cured.
- § 170. Judgment also against sureties.
- § 171. Costs on appeal.

The case has been tried and the justice has rendered judgment, we will say, unfavorable to you. You feel dissatisfied. In the language of the statute, you "consider yourself aggrieved" by the decision; you do not wish the matter to end at this stage. Nor does it have to end. You have the right of appeal to the superior court—a right, however, which must be exercised within definite restrictions and limits, and the first of these is

#### § 162. THE AMOUNT IN CONTROVERSY.

Any person considering himself aggrieved by the judgment or decision of a justice of the peace in a civil action may, in person or by his agent, appeal therefrom to the superior court of the same county where the judgment was rendered or the decision made: Provided, there shall be no appeal allowed unless the amount in controversy exclusive of costs, shall exceed the sum of twenty dollars. [1910.]

#### § 163. HOW THE APPEAL IS TAKEN.

The appeal must be taken within twenty days after the judgment is rendered or the decision made. The appellant must serve a notice of his intention to appeal upon the justice of the peace. And a copy upon the adverse party. The notice of appeal should be in plain terms, specifying the cause,

venue, parties and time. The appellant must then file a bond, in a sum equal to twice the amount of the judgment and costs, securing the appellant to pay what costs may be taxed against him on appeal.

Such appeal shall be taken by filing a notice of appeal with the justice and serving a copy on the adverse party or his attorney, and, unless such appeal be by a county, city or school district, filing a bond or undertaking, as herein provided, within twenty days after the judgment is rendered or the decision made. No appeal, except when such appeals are by a county, city or school district, shall be allowed in any case unless a bond or undertaking shall be executed on the part of the appellant and filed with and approved by the justice, with one or more sureties, in the sum of one hundred dollars, to the effect that the appellant will pay all costs that may be awarded against him on the appeal; or if a stay of proceedings before the justice be claimed, except by a county, city or school district a bond or undertaking, with two or more sureties to be approved by the justice, in a sum equal to twice the amount of the judgment and costs, to the effect that the appellant will pay such judgment, including costs, as may be rendered against him on the appeal. [1911.]

#### § 164. APPEAL STAYS PROCEEDINGS.

The effect of appeal, properly made, is to stay proceedings in the cause, such as execution of the judgment appealed from, until the superior court has had the opportunity of passing upon the appeal.

Upon appeal being taken and a bond filed to stay all proceedings, the justice shall allow the same and make an entry of such allowance in his docket, and all further proceedings on the judgment before the justice shall thereupon be suspended; and if in the meantime execution shall have been issued, the justice shall give the appellant a certificate that such appeal has been allowed. [1912.]

**FORM.**  
**APPEAL BOND.**

[Court and Cause.]

Know all men by these presents, that we, John Jones, as principal, and William Smith and Thomas Robinson, as sureties, are held and firmly bound unto Edward Rash, the plaintiff above named, in the full sum of one hundred dollars, lawful money of the United States, for which payment, well and truly to be made, we bind ourselves and our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 3d day of May, 1910.

The condition of this obligation is such that whereas on the 23d day of April, 1910, J P, Esq., one of the justices of the peace in and for said King County, did render a judgment in the above-entitled cause in favor of said plaintiff, Richard Rash, and against said defendant, John Jones, for the sum of \$50, and whereas the said John Jones has given due and proper notice that he appeals from the said judgment to the Superior Court of said county: Now, therefore, if the said John Jones shall pay such judgment, including costs, as may be rendered against him on appeal, then this obligation shall become void; otherwise, to remain in full force and effect.

Dated, signed, etc.

**§ 165. EXECUTION RECALLED BY APPEAL.**

If the officer having the writ of execution shall have proceeded to carry out the order and shall have taken the property of the defendant on execution, he will be obliged to release the same on being presented with the certificate of appeal as above.

On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the defendant that may have been taken on execution; and if the body of the defendant have been taken on execution he shall be discharged from imprisonment. [1913.]

**§ 166. THE TRANSCRIPT.**

When the cause goes up to the superior court for review, all the entries made in the justice's docket concerning the



**CERTIFICATE OF TRANSCRIPT OF JUDGMENT.**

[Court and Cause.]

[Exact Copy from the Docket of the Judgment.]

[Venue.]

I hereby certify that I have compared the foregoing with the original entry of judgment rendered by me in the above-entitled cause, and that the same is a true and correct transcript therefrom and of the whole thereof, as the same appears from my docket.

Dated at Seattle, King County, this 1st day of August, 1911.

J P.

**§ 167. THE SAME PLEADINGS AS IN LOWER COURT.**

The issue before the justice shall be tried in the superior court without other or new pleadings, unless otherwise directed by the court. [1915.]

**§ 168. SUPERIOR COURT MAY COMPEL TRANSCRIPT.**

Upon an appeal being taken and allowed the superior court may, by rule and attachment, compel the justice to make and deliver to the appellant a certified copy of the proceedings upon paying to such justice the fees allowed by law for making such transcript, and whenever the court is satisfied that the return of the justice is substantially erroneous or defective, it may, by rule and attachment, compel him to amend the same. [1916.]

**§ 169. DEFECTIVE BOND—HOW CURED.**

If the appellant should file a defective bond in the cause, the adverse party cannot take advantage of that fact if the appellant make and file in the superior court a proper bond.

No appeal allowed by a justice shall be dismissed on account of the bond being defective, if the appellant will, before the motion is determined, execute and file in the superior court such a bond as he should have executed at the time of taking the appeal, and pay all costs that shall have accrued by reason of such defect. [1917.]

**§ 170. JUDGMENT ALSO AGAINST SURETIES.**

In all cases of appeal to the superior court if, on the trial anew in such court, the judgment be against the

appellant, in whole or in part, such judgment shall be rendered against him and his sureties in the bond for the appeal. [1918.]

### § 171. COSTS ON APPEAL.

If the party appellant does not recover a more favorable judgment in the higher court, he must pay all costs.

In all civil actions tried before a justice of the peace, in which an appeal shall be taken to the superior court, and the party appellant shall not recover a more favorable judgment in the superior court than before the justice of the peace, such appellant shall pay all costs.

### FORM.

#### INDEMNITY BOND.

Know All Men by These Presents, that we ....., as principal, and ..... and ....., as sureties, of ....., in the county of ..... and state of Washington, are jointly and severally indebted unto ..... in the sum of ..... dollars, lawful money of the United States, to be paid to the said ....., heirs or assigns; for which payment, well and truly to be made, we jointly and severally bind ourselves, our and each of our heirs, executors, administrators and assigns, firmly by these presents. Signed this .... day of ....., 19.....

The condition of the above and foregoing bond and obligation is such that,

Whereas, the said ..... did, on the .... day of ....., 19....., .....

Now, therefore, if the above-bounden ..... shall jointly and severally well and truly save, keep and bear harmless, and indemnify the same ..... of and from all harm, expense, trouble, damage, costs, suits, actions, judgments and executions, which shall or may at any time arise, come or be brought against or suffered or expended by ..... arising from any of the matters referred to herein, ....., then this obligation to be null and void; otherwise to be and remain in full force and effect.

..... [Seal.]  
 ..... [Seal.]  
 ..... [Seal.]

Signed and delivered in presence of

[Acknowledgment.]

.....  
 .....

## CHAPTER XI.

## EXECUTIONS UPON JUDGMENTS.

- § 172. Limit of five years.
- § 173. Execution—How directed.
- § 174. Indorsement of writ.
- § 175. Notice of sale of goods.
- § 176. Return of sale.
- § 177. Officer not to purchase at sale.
- § 178. Claim of third person.
- § 179. Alias executions (renewal).
- § 180. Stay of execution.
- § 181. Bond for stay.
- § 182. Execution revoked.
- § 183. Execution against sureties.
- § 184. Substitution of surety.
- § 185. Offsetting mutual judgments.
- § 186. Execution for the balance of mutual judgments.
- § 187. Offset of judgment rendered by another justice.
- § 188. Execution issued by justice's successor.
- § 189. Arrest of defendant on return of execution.
- § 190. Execution for costs.
- § 191. Claimant may have any remedy.
- § 192. Examination of garnishees.
- § 193. Statutory exemptions.
- § 194. Pension money exemption.
- § 195. Insurance money exempt.
- § 196. Life insurance money exempt.
- § 197. Cemetery lots exempt.
- § 198. Who is a householder.
- § 199. Procedure on claiming exemptions.

It has been said that almost any lawyer can get a judgment but that it takes a good lawyer to get the money after judgment. This is more a matter of energy than anything else, for the procedure upon execution is not peculiarly intricate.

There are four kinds of executions: Against the property of the debtor, the person of the debtor and for possession of personal property wrongfully detained, and enforcing a court order.

There shall be four kinds of execution: One against the property of the judgment debtor; another against

his person; the third for the delivery of the possession of personal property, or such delivery with damages for withholding the same, and the fourth commanding the enforcement of or obedience to any special order of the court. And in all cases there shall be an order to collect the costs. [611.]

### FORMS OF EXECUTION.

State of Washington,  
County of .....—ss.

To the Sheriff or Any Constable of Said County:

Whereas, judgment against C D for the sum of ..... dollars and ..... dollars, costs of suit, was recovered on the .... day of ....., 19...., before the undersigned, one of the justices of the peace in and for said county, at the suit of A B. These are, therefore, in the name of the state of Washington, to command you to levy on the goods and chattels of the said C D (excepting such as the law exempts), and make sale thereof according to law, to the amount of said sum and costs upon this writ, and the same return to me within thirty days, to be rendered to the said A B for his debt, interests and costs.

Given under my hand this .... day of ....., 19.....

J P,  
Justice of the Peace.

### EXECUTION AGAINST THE BODY.

[Court and Cause.]

To the Sheriff or Any Constable of Said County, Greeting:

Whereas, judgment against William James for the sum of twenty dollars and thirteen dollars, costs of suit, was recovered on the 1st day of August, 1911, before the undersigned, one of the justices of the peace in and for said county, at the suit of James Sutton, and an execution against his property returned unsatisfied; these are, therefore, in the name of the state of Washington, to command you to take the body of the said William James, and him convey and deliver to the keeper of the jail of said county, who is hereby commanded to receive and keep the said William James in safe

custody in prison until the aforesaid sum and all legal expenses be paid and satisfied, or until he be discharged by due course of law; and of this writ make due return within thirty days.

Given under my hand this 11th day of September, 1911.

J P.

## § 172. LIMIT OF FIVE YEARS.

But there may be no execution after the lapse of five years.

Execution for the enforcement of a judgment in a justice's court may be issued on the application of the party entitled thereto, in the manner hereinbefore prescribed, but after the lapse of five years from the date of the judgment, no execution shall issue except by leave of the justice before whom such judgment may be, upon reasonable notice to the defendant. [1876.]

The first step in executing judgment is to obtain a writ of execution from the justice of the peace. This is a simple form, with a statement of the parties to the case, the amount of the judgment, etc., and on the back a notation of the costs collectible, including the costs of the writ.

The writ of execution shall be issued in the name of the state of Washington, and subscribed by the justice, and shall be directed to the sheriff or any constable of the county where the justice resides, and shall intelligently refer to the judgment, stating the court, the county where judgment was rendered, the names of the parties, the amount of the judgment if it be for money, and the amount actually due thereon, and shall require substantially as follows:

1. If it be against the property of the judgment debtor, it shall require the officer to satisfy the judgment, with interest, out of the personal property of the debtor;

2. If it be against the person of the judgment debtor, it shall require the officer to arrest such debtor, and commit him to the jail of the county until he shall pay the judgment, with interest, or be discharged according to law;

3. If it be for the delivery of the possession of personal property, it shall require the officer to deliver the possession of the same, particularly describing it, to

the party entitled thereto, and may, at the same time, require the officer to satisfy any charges or damages recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, shall be specified therein. And in all cases the execution shall require the collection of all interest, costs and increased costs thereon. [513.]

### FORM.

#### EXECUTION WRIT—GENERAL.

[Court and Cause.]

To the Sheriff or Any Constable of Said County, Greeting:

Whereas, judgment against Timothy Winn for the sum of ten dollars and \$7 costs of suit was recovered on the 1st day of August, 1911, before the undersigned, one of the justices of the peace within and for said county, at the suit of Wm. Chisolm. These are, therefore, in the name of the state of Washington, to command you to levy on the goods and chattels of the said Timothy Winn (excepting such as the law exempts) and make sale thereof according to law, to the amount of said sum and costs upon this writ, and return the same to me within thirty days, to be rendered to the said Wm. Chisolm for his debt, interests and costs.

Given under my hand this 15 day of August, 1911.

J P.

#### § 173. EXECUTION—HOW DIRECTED.

The execution shall be directed (except when it is otherwise specially provided) to the sheriff or any constable of the county where the justice resides; shall be dated on the day it is issued, and made returnable within thirty days from the date; and it shall be against the goods and chattels of the person against whom the same is issued. [1879.]

The justice and the constable should both indorse the writ of execution as follows:

#### § 174. INDORSEMENT OF WRIT.

Before any execution shall be delivered the justice shall state in his docket, and also on the back of the execution, the amount of the debt, or damages and

costs, and of the fees due to each person separately, and the officer receiving such execution shall indorse the time of the reception of the same. [1880.]

We will assume that the execution is the common one against goods and chattels. The officer, with the writ of execution properly indorsed, proceeds to the place where the debtor's goods are situated, takes them into his custody, and advertises them for sale.

#### § 175. NOTICE OF SALE OF GOODS.

The officer, after taking goods and chattels into his custody by virtue of an execution, shall, without delay, give public notice by at least three advertisements, put up at three public places in the county of the time and place, when and where they will be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale. [1882.]

#### FORM.

#### NOTICE OF SALE ON EXECUTION.

[Court and Cause.]

By virtue of a writ of execution issued by J P, Esq., a justice of the peace of said King County, and to me directed and delivered, for a judgment rendered by said justice of the peace on the 1st day of August, 1911, in favor of Henry Biggs, plaintiff, and against Richard Wright, defendant, for the sum of forty dollars, and the sum of seven dollars costs of suit and five dollars attorney's fee, I have levied upon the following described personal property, to wit: [Describe property.]

Notice is hereby given that on the 1st day of November, 1911, at the hour of 9:30 o'clock in the forenoon of said day, at the front door of the courthouse of King County, in the city of Seattle, said county, I will sell all the right, title and interest of the said Richard Wright, defendant, in and to the above-described personal property, at public auction, to the highest and best bidder for cash, to satisfy said execution and all costs.

Dated and signed this 1st day of September, 1911.

HENRY BADGE,  
Constable.

**§ 176. RETURN OF SALE.**

The chattels on such sale are sold to the highest bidder and the constable makes return of sale.

At the time and place so appointed, if the goods and chattels be present for inspection of bidders, the officer shall expose them to sale at public vendue to the highest bidder; he shall return the execution and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto. [1883.]

The officer shall not be a purchaser at such sale.

**§ 177. OFFICER NOT TO PURCHASE AT SALE.**

No officer shall directly or indirectly purchase any goods or chattels at any sale made by him upon execution, and every such purchase shall be absolutely void. [1884.]

Supposing, however, that when the sheriff or constable goes to levy upon certain goods a third person, against whom the plaintiff has no action, should be the possessor, or claim to be, of the chattels: In that case the new claimant must make affidavit of ownership and serve the same upon the levying officer, who, in turn, may demand an indemnity bond from the plaintiff, thereafter notifying the plaintiff and the court, who shall thereupon set the cause for trial.

**§ 178. CLAIM OF THIRD PERSON.**

If any property levied on be claimed by any other person than the defendant in execution, and the claimant make affidavit of his title or right to the possession of the same, stating the ground of such title or right, and serve the same upon the sheriff or constable, while the property is in his possession, said sheriff or constable shall not be bound to keep the property unless the plaintiff on demand indemnify him in the same manner as provided in this act for cases where property held under attachment is claimed by persons not parties to the suit and when such claim is made, the sheriff or constable shall immediately file the claimant's affidavit with the justice, and notify the plaintiff thereof, and unless the property be at once released, the justice shall set the case for trial upon the allegations of the claim-

ant's affidavit, and the case shall proceed and be determined in the same manner as provided in this act for cases where property held under attachment is claimed by persons not parties to the suit. [1888.]

### § 179. ALIAS EXECUTIONS (RENEWAL).

This is simply a renewal of the execution until judgment shall have been executed.

If an execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time by the justice who issues the same, or by the justice to whom his docket is transferred, by an indorsement thereon to that effect, signed by him and dated when the same shall be made. If any part of such execution has been satisfied the indorsement of renewal shall express the sum due on the execution. Every such indorsement shall renew the execution in full force in all respects for thirty days, and no longer, and an entry of such renewal shall be made in the docket of the justice. [1881.]

### § 180. STAY OF EXECUTION.

The proceedings on execution may be stayed for a period of from one to two months, according to the value of the judgment, by the filing of a stay bond, with proper sureties.

The execution upon a judgment by a justice of the peace may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party, and for the following periods of time, to be calculated from the date of the judgment:

1. If the judgment be for any sum not exceeding twenty-five dollars, exclusive of costs, one month.
2. If it be for more than twenty-five dollars, two months. [1867.]

### § 181. BOND FOR STAY.

To entitle any person to such stay of execution some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after rendering of the judgment, enter into a bond, before the justice, to the adverse party, in a sufficient sum to secure the payment of the judgment and costs conditioned to be void upon such payment, at the expiration of the stay. [1868.]

**FORM.****BOND TO STAY EXECUTION.**

[Court and Cause.]

Whereas, James Sutton has obtained a judgment before J P, Esq., one of the justices of the peace in and for Pierce County, on the 1st day of August, 1911, against William James, for thirty-three dollars; now, therefore, I, John Willing, acknowledge myself bound to the said James Sutton in the sum of seventy-five dollars, this bond to be void if such judgment shall be paid at the expiration of two months after the time it was rendered.

Dated the 3d day of August, 1911.

**JOHN WILLING.**

Now, when the justice issues the stay of execution, the effect of it is to revoke and recall the execution which may have been issued, releasing the goods if they have been taken and discharging the defendant if he has been arrested.

**§ 182. EXECUTION REVOKED.**

If judgment be stayed in the manner above provided, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner, and with like effect as he is hereinafter directed to revoke an execution, after an appeal has been allowed; and if the defendant have been committed, shall order him to be discharged from custody. [1872.]

**§ 183. EXECUTION AGAINST SURETIES.**

If at the expiration of such stay, the judgment be not paid, the execution shall issue against both the principal and bail. If the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of money collected by him on the execution, was collected from the bail, and the time when the same was received. [1870.]

**FORM.****EXECUTION AGAINST PRINCIPAL AND SURETY.**

State of Washington,  
County of . . . . ., —ss.

To the Sheriff or Any Constable of Said County:

Whereas, judgment against C D for the sum of . . . . . dollars and for . . . . . dollars, costs of suit, was recovered on the . . . day of . . . . ., 19 . . . , before the undersigned, one of the justices of the peace in and for said county, at the suit of A B; and, whereas, on the . . . day of . . . . ., 19 . . . , E F became surety to pay said judgment and costs, in . . . month from the date of the judgment aforesaid, agreeably to law, in the payment of which the said C D and E F have failed; these are therefore in the name, etc. [as in the common form].

**§ 184. SUBSTITUTION OF SURETY.**

After the return of such execution, the bail shall be entitled, on application to the justice, to have the judgment, or so much thereof as may have been collected from him in satisfaction of the execution, transferred to his surety, and he may collect the same from the defendant by execution, together with the interest at the rate of twelve per cent per annum. [1871.]

**§ 185. OFFSETTING MUTUAL JUDGMENTS.**

Where there are mutual judgments, one judgment may be set off against the other.

If there be mutual justices' judgments between the same parties, upon which the time for appealing has elapsed on judgment, on the application of either party, and reasonable notice given to the adverse party, one may be set off against the other, by the justice before whom the judgment against which the setoff is proposed may be. [1873.]

**§ 186. EXECUTION FOR THE BALANCE OF MUTUAL JUDGMENTS.**

If any justice shall set off one judgment against another, he shall make an entry thereof on his docket, and execution shall issue only for the balance which may be due after such setoff. If a justice shall allow a tran-

script of a judgment rendered by another justice to be set off, he shall file such transcript among the papers relating to the judgment in which it is allowed in setoff. If he shall refuse such transcript as a setoff, he shall so certify on the transcript, and return the same to the party who offered it. [1875.]

#### § 187. OFFSET OF JUDGMENT RENDERED BY ANOTHER JUSTICE.

Where one desires to offset a judgment rendered by a justice other than the one issuing the writ of execution, the procedure is to obtain a transcript from the first justice, certifying that the judgment is unsatisfied in whole or in part, and that no appeal has been taken thereon.

If the judgment proposed as a setoff was rendered before another justice, the party proposing such setoff shall produce before such justice a transcript of such judgment, upon which there is a certificate of the justice before whom such may be, that it is unsatisfied in whole or in part, and that there is no appeal, and that such transcript was obtained for the purpose of being set off against the judgment to which it is offered as a setoff. The justice granting such transcript shall make an entry thereof on his docket, and all further proceedings on such judgment shall be stayed, unless such transcript be returned with the proper justice's certificate thereon that it has not been allowed in setoff. [1874.]

#### § 188. EXECUTION ISSUED BY JUSTICE'S SUCCESSOR.

A judgment rendered by a justice may be executed upon the writ of his successor in office.

When any judgment shall have been rendered by any justice of the peace, and the same not be satisfied during his continuance in office, and the docket of such justice shall have been transferred to another justice, or to the successor of the justice rendering such judgment, the justice to whom the docket shall be delivered shall issue execution upon such unsatisfied judgment in the same manner, and with like effect as if he himself had rendered the judgment. [1877.]

### **§ 189. ARREST OF DEFENDANT ON RETURN OF EXECUTION.**

If the action be one in which the defendant might have been arrested upon a warrant, an execution against the person of such defendant may be issued after the return of an execution against his property unsatisfied in whole or in part. An execution against the person may likewise be issued after such return, where the defendant has been arrested upon a warrant and not discharged according to law. [1885.]

### **§ 190. EXECUTION FOR COSTS.**

Any justice of the peace may issue an execution against the prevailing party, to collect fees and costs for which such party may be liable, after an execution has been first issued against the other party, and returned "no property found." [1887.]

### **§ 191. CLAIMANT MAY HAVE ANY REMEDY.**

Nothing contained in the last section shall be so construed as to prevent the claimant of property levied on by execution from resorting to any legal remedy he may choose to pursue, instead of proceeding in the manner therein prescribed. [1889.]

### **§ 192. EXAMINATION OF GARNISHEES.**

If there be no property found, or if the goods and chattels levied on be not sufficient to satisfy such execution, the officer shall, on demand of the plaintiff, summon in writing, as garnishees, such persons as may be named to (him by) the plaintiff, or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees, and the like proceedings shall be had thereon before the justice to final judgment as in the proceedings by attachment. [1886.]

### **§ 193. STATUTORY EXEMPTIONS.**

The law has wisely placed restrictions upon the scope of the writ of execution. Not everything a man has may be taken to satisfy a debt. On the contrary, the law aims to preserve to him enough for the support of himself and family, even though the creditor's execution go for the time,

at least, unsatisfied. The following exemptions should be carefully noticed:

The following property shall be exempt from execution and attachment, except as hereinafter specially provided:

1. All wearing apparel of every person and family;
2. All private libraries, not to exceed five hundred dollars in value, and all family pictures and keepsakes;
3. To each householder, one bed and bedding, and one additional bed and bedding for each additional member of the family, and other household goods and utensils and furniture not exceeding five hundred dollars, coin, in value. The other household goods and utensils and furniture specified above shall on the demand of the officer having the execution or attachment in hand, be selected by the husband, if present, if not present they shall be selected by his wife, and in case neither husband nor wife, nor other person entitled to the exemption by having the description of a householder, shall be present to make the selection, then the sheriff shall make a selection of the household goods, utensils and furniture equal in value to said five hundred dollars, and shall return the same as exempt by inventory, and such selection by the sheriff or other person described above shall be prima facie evidence—1. That such household goods, utensils, and furniture are exempt from execution and attachment; 2. That the value of the property so selected is not over five hundred dollars;
4. To each householder, two cows, with their calves, five swine, two stands of bees, thirty-six domestic fowls, and provisions and fuel for the comfortable maintenance of such householder and family for six months, also feed for such animals for six months: Provided, That in case such householder shall not possess or shall not desire to retain the animals above named, he may select from his property and retain other property not to exceed two hundred and fifty dollars, coin, in value. The selection in the proviso mentioned shall be made in the manner and by the person and at the time mentioned in subdivision three, and said selection shall have the same effect as selections made under subdivision three of this section;
5. To a farmer, one span of horses or mules, with harness, or two yoke of oxen, with yokes and chains, and

one wagon, also farming utensils actually used about the farm, not exceeding in value five hundred dollars in coin; also one hundred and fifty bushels of wheat, one hundred and fifty bushels of oats or barley, fifty bushels of potatoes, ten bushels of corn, ten bushels of peas, and ten bushels of onions for seeding purposes;

6. To a mechanic, the tools and instruments used to carry on his trade for the support of himself and family, also material used in his trade, not exceeding in value five hundred dollars in coin;

7. To a physician, his library, not to exceed five hundred dollars in coin; also, one horse, with harness and buggy; the instruments used in his practice, and medicines not exceeding in value two hundred dollars in coin;

8. To attorneys, clergymen and other professional men, their libraries, not exceeding one thousand dollars in coin value; also office furniture, fuel and stationery, not exceeding in value two hundred dollars, in coin;

9. All firearms kept for the use of any person or family;

10. To any person, a canoe, skiff or small boat, with its oars, sails and rigging, not exceeding in value two hundred and fifty dollars;

11. To a person engaged in lightering for his support or that of his family, one or more lighters, barges or scows, and a small boat, with oars, sails and rigging, not exceeding in the aggregate two hundred and fifty dollars, in coin, value;

12. To a teamster or drayman engaged in that business for the support of himself, or his family, his team, consisting of one span of horses, or mules, or two yoke of oxen, or a horse and mule, with harness, yokes, one wagon, truck, cart, or dray;

13. To a person engaged in the business of logging for his support or that of his family three yoke of work cattle and their yokes, and axes, chains, implements for the business, and camp equipments, not exceeding three hundred dollars, coin, in value;

14. A sufficient quantity of hay, grain, or feed to keep the animals mentioned in the several subdivisions of this section for six weeks. But no property shall be exempt from an execution issued upon a judgment for the price thereof, or any part of the price thereof, or for any tax levied thereon;

Each person shall be entitled to select the property to which he is entitled under the several subdivisions of this section. [563.]

#### § 194. PENSION MONEY EXEMPTION.

Any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned by him, shall be exempt from execution, attachment, or seizure by or under any legal process whatever. [566.]

When a debtor dies or absconds, and leaves his family any money exempted by the last preceding section, the same shall be exempt to his family as provided in said section. [567.]

#### § 195. INSURANCE MONEY EXEMPT.

Whenever property which by the laws of this state is exempt from execution or attachment is insured and the same is destroyed by fire, then the insurance money coming to or belonging to the person thus insured, to an amount equal to the exempt property thus destroyed, shall be exempt from execution and attachment. [568.]

#### § 196. LIFE INSURANCE MONEY EXEMPT.

The proceeds or avails of all life and accident insurance shall be exempt from all liability for any debt. [569.]

#### § 197. CEMETERY LOTS EXEMPT.

Burial lots sold by such [cemetery] association shall be for the sole purpose of interment and shall be exempt from taxation, attachment, execution, or other claims, liens or process whatsoever, if used as intended, exclusively for burial purposes, and in no wise with a view to profit. [3647.]

#### § 198. WHO IS A HOUSEHOLDER.

A householder, as designated in all statutes relating to exemptions, is defined to be:—

1. The husband or wife, or either;
2. Every person who has residing with him or her, and under his or her care and maintenance, either:—

(a) His or her minor child, or the minor child of his or her deceased wife or husband;

(b) A minor brother or sister, or the minor child of a deceased brother or sister;

(c) A father, mother, grandfather or grandmother;

(d) The father, mother, grandfather or grandmother of deceased husband or wife;

(e) An unmarried sister, or any other of the relatives mentioned in this section who has attained the age of majority, and are unable to take care of or support themselves. [565.]

### § 199. PROCEDURE ON CLAIMING EXEMPTIONS.

As a rule, when current wages are garnished either on a judgment or otherwise, the exemption is claimed by the husband making and filing his affidavit, setting forth that he is a householder, that he has a wife and so many children or persons dependent upon him for support; that the money garnished is for current wages earned from such a date to such a date, and that they are exempt under the law. In other classes of exemptions, the claims are made as follows:

When a debtor claims personal property as exempt, he shall deliver to the officer making the levy an itemized list of all the personal property owned or claimed by him, including money, bonds, bills, notes, claims and demands, with the residence of the person indebted upon the said bonds, bills, notes, claims, and demands, and shall verify such list by affidavit. He shall also deliver to such officer a list, by separate items, of the property he claims as exempt. If the husband be absent or incapable of acting the claim may be made, the list delivered and verified, by the wife. If the creditor, his agent or attorney, demand an appraisement thereof, two disinterested householders of the neighborhood shall be chosen, one by the debtor and the other by the creditor, his agent or attorney, and these two, if they cannot agree, shall select a third (but if either party fail to choose an appraiser, or the two fail to select a third, or) if one or more of the appraisers fail to act, the officer shall appoint one. The appraisers shall forthwith proceed to make a list, by separate items, of the personal property selected by the debtor as exempt, which they shall decide as exempt, stating the value of each article, and annexing to the list their affidavit to the following

effect: "We solemnly swear that, to the best of our judgment, the above is a fair cash valuation of the property therein described," which affidavit shall be signed by two appraisers at least, and be certified by the officer administering the oaths. The list shall be delivered to the officer holding the execution or other process, and be by him annexed to and made a part of his return, and the property therein specified shall be exempt from levy and sale, and the other personal estate of the debtor shall remain subject thereto. In case no appraisement be required, the officer shall return with the process the list of the property claimed as exempt by the debtor. The appraisers shall each be entitled to one dollar, to be paid by the creditor, if all the property claimed by the debtor shall be exempt; otherwise, to be paid by the debtor. [572.]

## CHAPTER XII.

## ARREST IN CIVIL ACTIONS.

- § 200. Warrant of arrest (civil).
- § 201. Affidavit for warrant.
- § 202. Bond for arrest in civil action.
- § 203. Arrest of defendant.
- § 204. Plaintiff notified of arrest.
- § 205. Detention of defendant.
- § 206. Discharge of defendant.
- § 207. Guardian for infant plaintiff.
- § 208. Guardian for infant defendant.

One of the greatest injustices of the old legal system was the arrest and confinement in jail of debtors. The principle of this was altogether wrong, and with the advancement of ideas of real justice, imprisonment for debt was abandoned and the debtors' jail became a thing of the past. However, there are a number of cases in which a debtor while he owes an honest debt will act dishonestly to avoid payment, or when he has committed fraud in obtaining the goods and creating the debt. In such cases the law provides for the arrest of such persons, but is careful to define exactly the offenses subjecting to arrest and the procedure of arrest and bail therefor.

The defendant may be arrested in the following cases:

1. In an action for the recovery of damages, on a cause of action not arising out of contract, where the defendant is a nonresident of the state, or is about to remove therefrom, or where the action is for an injury to person or character, or for injuring, or for wrongfully taking, detaining or concerning property.

2. In an action for a fine or penalty, or on a promise to marry, or for money received, or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer, or by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in office or in a professional employment.

3. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof has been concealed, removed or disposed of, so that it cannot be found or taken by the sheriff, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

4. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention, or conversion of which, the action is brought.

5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

6. When the action is to prevent threatened injury to, or destruction of property, in which the party bringing the action has some right, interest, or title, which will be impaired or destroyed by such injury or destruction, and the danger is imminent that such property will be destroyed, or its value impaired, to the injury of the plaintiff.

7. On the final judgment or order of any court in this state, while the same remains in force, when the defendant, having no property subject to execution, or not sufficient to satisfy such judgment, has money which he ought to apply in payment upon such judgment, which he refuses to apply, with intent to defraud the plaintiff, or when he refuses to comply with a legal order of the court, with intent to defraud the plaintiff; or, when any one or more of the causes exist for which an arrest is allowed, in the first class of cases mentioned in this section. [794.]

The above law applies to orders issued from the superior courts of the state, but the justice of the peace, within the limits of his jurisdiction, has the same authority.

## § 200. WARRANT OF ARREST (CIVIL).

A justice of the peace shall issue a warrant of arrest in all such cases within his jurisdiction, and for such causes, and upon such proof as is provided for an order for a warrant in the act regulating civil actions. [1790.]

**FORM.****WARRANT OF ARREST AND BAIL.**

[Court and Cause.]

To the Sheriff or Any Constable of Said County, Greeting:

In the name of the state of Washington, you are hereby commanded to take the body of George Runn, if he be found in your county, and bring him forthwith before the undersigned, one of the justices of the peace in and for said county, at his office, room 602, Prefontaine Building, Seattle, King County, to answer Samuel Chase in a civil action; and you are hereby commanded to give notice thereof to the said plaintiff, or his agent or attorney; and have you then and there this writ.

Given under my hand this 3d day of July, 1911.

J P.

Before the order for warrant of arrest shall issue, the party must make his affidavit that one or more of the sections above specified has been violated.

**§ 201. AFFIDAVIT FOR WARRANT.**

The court or judge making the order of arrest shall first be satisfied by the affidavit of the party, or his agent, or attorney, and other proof, under oath, exclusive of the complaint, that the case is one in which an arrest is provided for in section 116 and that one or more of the prescribed cases exist, which proof shall be in writing, and, together with the order, be filed with the clerk before he shall issue any warrants for the arrest. [750.]

The plaintiff having made his affidavit himself, or by his agent and attorney, setting forth the fact that the defendant is doing or is about to do one of the prohibited things above, he must file his indemnity bond before the order will issue. This bond provides that if the defendant recover judgment in the action, he shall have his costs and damages suffered by the arrest.

**§ 202. BOND FOR ARREST IN CIVIL ACTION.**

Before issuing the warrant of arrest the justice shall require a bond on the part of the plaintiff, with one or

more sureties to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which may be sustained by reason of the arrest, not exceeding the sum specified in the bond, which shall be at least one hundred dollars. [1791.]

## FORM.

### BOND FOR THE ABOVE WARRANT.

[Court and Cause.]

Know All Men by These Presents, that we, Samuel Chase, as principal, and E F and G H, as sureties, are held and firmly bound unto George Runn, his executors, administrators and assigns, in the penal sum of one hundred dollars, lawful money of the United States, for which payment, well and truly to be made, we hereby bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 8th day of August, 1912.

The condition of this obligation is such that, whereas, an application has been made by the above-bounden Samuel Chase, to . . . . ., Esq., one of the justices of the peace in and for Seattle Precinct, King County, for a warrant to arrest George Runn, defendant, founded upon an affidavit of the said plaintiff, setting forth that the said George Runn [state grounds for arrest]; now, therefore, if the said Samuel Chase shall pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum of one hundred dollars, then this obligation to be void; otherwise to remain in full force and effect.

## § 203. ARREST OF DEFENDANT.

The affidavit and the bond having been filed and the warrant having issued, the defendant is thereupon arrested and brought before the justice.

The warrant shall be served by arresting the defendant and taking him before the justice of the peace who issued the same; but if such justice, at the return

thereof, be absent or unable to try the action, the officer shall immediately take the defendant to the nearest justice of the same county, who shall take cognizance of the action, and proceed thereon as if the warrant had been issued by himself. [1792.]

The plaintiff is then notified of the arrest.

#### **§ 204. PLAINTIFF NOTIFIED OF ARREST.**

The officer making the arrest shall immediately give notice to the plaintiff, his agent or attorney, and indorse on the warrant the time of the arrest, and the time of serving notice on the plaintiff. [1793.]

The defendant after his arrest may not be detained in custody longer than twenty-four hours, unless the action is commenced in that time or is delayed by the defendant himself. If, however, the defendant wishes to have the case continued in order that he may be in a better position to defend himself, he may obtain such continuance by remaining in custody or giving a bond for his appearance at the time set for trial.

#### **§ 205. DETENTION OF DEFENDANT.**

When a defendant is brought before a justice on a warrant he shall be detained in the custody of the officer until he shall be discharged according to law; but in no case shall the defendant be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time the trial of the action be commenced or unless it has been delayed at the instance of the defendant. [1794.]

#### **§ 206. DISCHARGE OF DEFENDANT.**

If the defendant, on his appearance, demand a continuance the same may be granted on condition that he remain in custody or execute and file with the justice a bond, with one or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court; or that the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action. On filing such bond, the justice shall order the defendant to be discharged from custody. [1795.]

**§ 207. GUARDIAN FOR INFANT PLAINTIFF.**

An infant plaintiff must commence the action by guardian ad litem.

No action shall be commenced by an infant plaintiff except by his guardian, or until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend in such action, who shall be responsible for the costs therein. [1771.]

**§ 208. GUARDIAN FOR INFANT DEFENDANT.**

In like manner an infant defendant is defended by guardian.

After service and return of process against an infant defendant, the action shall not be further prosecuted until a guardian for such infant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person who shall consent thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice; and such guardian for the defendant shall not be liable for any costs in the action. [1772.]

## CHAPTER XIII.

## ATTACHMENTS.

- § 209. Attachment, time of.
- § 210. Order in which writs are executed.
- § 211. Sale of attached property—Perishable.
- § 212. Discharge of improper writ.
- § 213. Return of writ.
- § 214. Moneys received on attachment.
- § 215. Garnishment of sheriff or constable.
- § 216. Attaching funds in hands of the court.
- § 217. Officer to inventory goods.
- § 218. Return of unsatisfied writ.
- § 219. Deficiency and surplus execution.
- § 220. Execution of judgment on attached property.
- § 221. Release on judgment for defendant.
- § 222. Examination of defendant as to his property.
- § 223. Pursuing property to another county.
- § 224. Motion for discharging attachment.
- § 225. Hearing on motion to discharge attachment.
- § 226. Counter-bond to discharge attachment.
- § 227. Judgment on counter-bond.
- § 228. Suit on attachment bond.
- § 229. Construction of amendment statutes.
- § 230. Affidavit for writ of attachment.
- § 231. Bond on attachment.
- § 232. Additional security.
- § 233. The writ of attachment.
- § 234. Execution of writ.

Among what are called the provisional remedies, not the least is that of the attachment, a process whereby the property of a defendant may be held as security for the satisfaction of judgment, should the plaintiff obtain same upon the trial of the cause.

The writ of attachment issues from the justice court upon the affidavit of the plaintiff, or his agent, setting forth the amount of the indebtedness and one or more of the statutory grounds of attachment which will be treated of hereafter. The greatest care is necessary in compiling the affidavit, as this is the basis of the remedy, and if vicious itself, vitiates all the proceedings thereupon. Our supreme court has held

(in *Tac. Grocery Co. v. Draham*, 8 Wash. 263) that a paper in the form of an affidavit, signed by plaintiff's attorney, but not appearing on its face to have been sworn to, was bad, and the judgment rendered thereon was null, the court not having jurisdiction thereof.

The plaintiff at the time of commencing an action, or at any time afterward before judgment, may have the property of the defendant, or that of any one or more of several defendants attached in the manner herein-after prescribed, as security for the satisfaction of such judgment as he may recover. [647.]

### § 209. ATTACHMENT, TIME OF.

Before a debt becomes due, property may be attached when there is a danger that it will be removed, or that the creditor will be defrauded.

An action may be commenced and the property of a debtor may be attached previous to the time when the debt becomes due, when nothing but time is wanting to fix an absolute indebtedness, and when the affidavit, in addition to that fact, states:—

1. That the defendant is about to dispose of his property with intent to defraud his creditors; or

2. That the defendant is about to remove from the state, and refuses to make any arrangements for securing the payment of the debt when it falls due, and which contemplated removal was not known to the plaintiff at the time the debt was contracted; or

3. That the defendant has disposed of his property, in whole or in part, with intent to defraud his creditors; or

4. That the debt was incurred for property obtained under false pretenses. [649.]

### § 210. ORDER IN WHICH WRITS ARE EXECUTED.

Where there are several attachments against the same defendant they shall be executed in the order in which they were received by the sheriff. [657.]

When the attaching officer takes into custody any perishable property, he may sell the same in the manner in which sales are made on execution. The provision also applies to

those cases in which the court is satisfied that the interests of both parties would be served by such sale.

#### **§ 211. SALE OF ATTACHED PROPERTY — PERISHABLE.**

If any of the property attached be perishable, or in danger of serious and immediate waste or decay, the sheriff shall sell the same in the manner in which such property is sold on execution. Whenever it shall be made to appear satisfactorily to the court that the interest of the parties to the action will be subserved by a sale of any attached property, the court may order such property to be sold in the same manner as like property is sold under execution. Such order shall be made only upon notice to the adverse party or his attorney, in case such party shall have been personally served with a summons or complaint and notice in the action. [662.]

#### **§ 212. DISCHARGE OF IMPROPER WRIT.**

If upon application it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged. [657.]

#### **§ 213. RETURN OF WRIT.**

The sheriff must return the writ of attachment with the summons, if issued at the same time, otherwise, within twenty days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto, and whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order may be filed in the offices of the county auditors in which the notices of attachment have been filed, and indexed in like manner. [676.]

Any moneys recovered by the officer under execution are held by him pending the outcome of the action.

#### **§ 214. MONEYS RECEIVED ON ATTACHMENT.**

All moneys received by the sheriff under the provisions of this chapter and all other attached property shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. [663.]

**§ 215. GARNISHMENT OF SHERIFF OR CONSTABLE.**

A sheriff or constable may be garnished for money of the defendant in his hands. So may a judgment debtor of the defendant when the judgment has not been previously assigned on the record, or by writing filed in the office of the justice or clerk, and by him minuted as an assignment on the margin of the execution docket, and also an executor or administrator may be garnished for money due from the decedent to the defendant. [664.]

**§ 216. ATTACHING FUNDS IN HANDS OF THE COURT.**

When the property to be attached is a fund in court, the execution of a writ of attachment shall be by leaving with the justice a copy thereof, with notice in writing specifying the fund. [665.]

**§ 217. OFFICER TO INVENTORY GOODS.**

The sheriff shall make a full inventory of the property attached, and return the same with the writ. [666.]

**§ 218. RETURN OF UNSATISFIED WRIT.**

If the execution be returned unsatisfied, in whole or in part, the plaintiff may proceed as in other cases upon the return of an execution. [669.]

The officer making the attachment may follow other property to secure the balance due after the sale of attached goods, when a balance shall still remain due and unpaid. On the other hand, when there is a balance of the attached property left in the custody of the officer after the payment of the judgment and costs, such balance shall be restored to the defendant.

**§ 219. DEFICIENCY AND SURPLUS EXECUTION.**

If, after selling all the property attached by him remaining in his hands, and applying the proceeds, deducting his fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the officer upon reasonable demand, shall deliver over to the de-

fendant the attached property remaining in his hands and any proceeds of the property attached unapplied on the judgment. [668.]

Assuming that the plaintiff prevails in his suit, the officer attaching the defendant's property shall satisfy the judgment therefrom. If he has sold any of the property as perishable, he will apply the proceeds of such sale on the execution which will issue on the judgment recovered. He may sell the balance of any property remaining in his hands on the attachment if he has not sufficient in the first place to execute the judgment.

#### § 220. EXECUTION OF JUDGMENT ON ATTACHED PROPERTY.

If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him which has not been delivered to the defendant or claimant as in this chapter provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose,—

1. By applying on the execution issued on said judgment the proceeds of all sales of perishable or other property sold by him, or so much as shall be necessary to satisfy the judgment;

2. If any balance remain due, he shall sell under the execution so much of the property as may be necessary to satisfy the balance, if enough for that purpose remain in his hands.

Notice of the sale shall be given and the sale conducted as in other cases of sales on execution. [667.]

On the other hand, if the defendant recover judgment against the plaintiff, all moneys and property attached shall be delivered to him or his agents; the attachment being discharged and the property released.

#### § 221. RELEASE ON JUDGMENT FOR DEFENDANT.

If the defendant recover judgment against the plaintiff, all the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, shall be delivered to the defendant or

his agent. The order of attachment shall be discharged, and the property released therefrom. [670.]

The law provides for the examination of a defendant when it is thought that he has property which is not exempt not known to the plaintiff or attaching officer.

#### § 222. EXAMINATION OF DEFENDANT AS TO HIS PROPERTY.

Whenever it appears by the affidavit of the plaintiff, or by the return of the attachment, that no property is known to the plaintiff or officer on which the attachment can be executed, or not enough to satisfy the plaintiff's claim, and it being shown to the court by affidavit that the defendant has property within the state not exempt, the defendant may be required by such court to attend before the court and give information on oath respecting the same. [660.]

Twenty-four hours after removal, the officer can pursue property into an adjoining county.

#### § 223. PURSUING PROPERTY TO ANOTHER COUNTY.

If, after an attachment has been placed in the hands of the sheriff, any property of the defendant is moved from the county, the sheriff may pursue and attach the same in an adjoining county, within twenty-four hours after removal. [658.]

The defendant has the right to move the court for the dissolution of the order of attachment on the ground that the same was improperly or irregularly issued. This is accomplished with due notice to the adverse party in order that he may appear in court and oppose the motion.

#### § 224. MOTION FOR DISCHARGING ATTACHMENT.

The defendant may at any time after he has appeared in the action, either before or after the release of the attached property, or before any attachment shall have been actually levied, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued. [673.]

## § 225. HEARING ON MOTION TO DISCHARGE ATTACHMENT.

If the motion be made upon affidavits upon the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to those on which the attachment was issued. [674.]

At any time before judgment, the defendant may bail out his goods, as it were, from the custody of the attaching officer, by filing an approved counter-bond, securing the observance on his part of the judgment of the court.

## § 226. COUNTER-BOND TO DISCHARGE ATTACHMENT.

If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the attachment, or after the return thereof, by the clerk [justice], to the effect that he will perform the judgment of the court, the attachment shall be discharged and restitution made of property taken or proceeds thereof. The execution of such bond shall be deemed an appearance of such defendant to the action. [671.]

### FORM.

#### UNDERTAKING TO DISCHARGE ATTACHMENT.

Whereas, a writ of attachment has been issued by J P, one of the justices of the peace in and for ..... county, against the personal property of C D, defendant, in an action in which A B is plaintiff: Now, therefore, we, C D, defendant, E F, and G H, acknowledge ourselves bound unto J K, constable, in the sum of ..... dollars [double the value of the property], engaging to deliver the property attached, to wit [here set forth a list of articles attached] or pay the value thereof to the sheriff or constable, to whom the execution upon a judgment obtained by plaintiff in the aforesaid action may be issued.

Dated this .... day of ....., 19....

C D, E F, G H.

This judgment goes against the defendant and his sureties.

**§ 227. JUDGMENT ON COUNTER-BOND.**

Such bond shall be part of the record, and if judgment go against the defendant, the same shall be entered against him and his sureties. [672.]

**§ 228. SUIT ON ATTACHMENT BOND.**

In an action on such bond [235], the plaintiff therein may recover, if he shows that the attachment was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true, the actual damages sustained and reasonable attorney's fees to be fixed by the court; and if it be shown that such attachment was sued out maliciously, he may recover exemplary damages, nor need he wait until the principal suit is determined before suing on the bond. [654.]

Finally, the chapter concerning attachments is to be liberally construed. Amendments are to be liberally allowed, and no attachment proceeding shall be quashed when any defect or omission may be remedied by amendment to show a legal cause for the issuing of the attachment.

**§ 229. CONSTRUCTION OF AMENDMENT STATUTES.**

This chapter shall be liberally construed, and the plaintiff at any time when objection is made thereto, shall be permitted to amend any defect in the complaint, affidavit, bond, writ or other proceeding; and no attachment shall be quashed or dismissed, or the property attached released, if the defect in any of the proceedings has been or can be amended so as to show that a legal cause for the attachment existed at the time it was issued, and the court shall give the plaintiff a reasonable time to perfect such defective proceedings. The causes for attachment shall not be stated in the alternative. [677.]

**§ 230. AFFIDAVIT FOR WRIT OF ATTACHMENT.**

The plaintiff or his agent must make an affidavit before the writ of attachment will issue, specifying the amount of the indebtedness and affirming that the writ is not sued out for purposes of fraud or delay.

The writ of attachment shall be issued by the justice of the peace before whom the action is pending; but be-

fore any such writ of attachment shall issue, the plaintiff, or someone in his behalf, shall make and file with such justice an affidavit showing that the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all just credits and offsets) and that the attachment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant, and either:

1. That the defendant is a foreign corporation; or
2. That the defendant is not a resident of this state;  
or
3. That the defendant conceals himself so that the ordinary process of the law cannot be served upon him; or
4. That the defendant has absconded or absented himself from his usual place of abode in this state, so that the ordinary process of law cannot be served upon him;  
or
5. That the defendant has removed or is about to remove any of his property from this state, with intent to delay or defraud his creditors; or
6. That the defendant has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of his property, with intent to delay or defraud his creditors; or
7. That the defendant is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or
8. That the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought; or
9. That the damages for which the action is brought are for injuries arising from the commission of some felony, or for the seduction of some female. [648.]

The next step is to present a bond, with two or more sureties, double the amount of the plaintiff's demand, and securing the prosecution of the suit and the payment of costs.

### § 231. BOND ON ATTACHMENT.

Before the writ of attachment shall issue, the plaintiff or someone in his behalf, shall execute and file with the justice a bond or undertaking, with two or more sureties, in a sum in no case less than fifty dollars, and double the amount for which plaintiff demands judg-

ment, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the amount specified in such bond or undertaking, as the penalty thereof should the same be wrongfully, oppressively or maliciously sued out. With said bond or undertaking, there shall also be filed the affidavit of the sureties, from which it must appear that such sureties are qualified, and that they are, taken together, worth the sum specified in the bond or undertaking, over and above all debts and liabilities and property exempt from execution. No person not qualified to become bail upon arrest shall be qualified to become surety upon a bond or undertaking for an attachment. [652.]

### FORM.

#### UNDERTAKING IN ATTACHMENT.

Whereas, an application has been made by A B, plaintiff, to J P, one of the justices of the peace in and for ..... county, for a writ of attachment against the personal property of C D, defendant; now, therefore, we, A B, plaintiff, and E F acknowledge ourselves bound to C D in the sum of ..... dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the said attachment and not exceeding the sum of ..... dollars.

Dated the .... day of ....., 19.....

A B, E F.

The defendant, at any time before judgment, may move the court for additional security.

#### § 232. ADDITIONAL SECURITY.

The defendant may, at any time before judgment, move the court for additional security on the part of the plaintiff, and if on such motion, the court is satisfied that the surety in the plaintiff's bond has removed from this state, or is not sufficient, the attachment may be vacated, and restitution directed of any property taken under it, unless in a reasonable time, to be fixed by the court, further security is given by the plaintiff, in form as provided in the preceding section. [653.]

**§ 233. THE WRIT OF ATTACHMENT.**

The writ of attachment shall be directed to the sheriff or any constable of the county in which the action is pending, and shall require him to attach and safely keep the property of such defendant within his county, to the requisite amount, which shall be stated in conformity with the affidavit. The officer shall in all cases attach the amount of property directed, if sufficient not exempt from execution be found in his county, giving that in which the defendant has a legal and unquestionable title a preference over that in which the title is doubtful or only equitable, and he shall, as nearly as the circumstances of the case will permit, levy upon property fifty per cent greater in valuation than the amount which plaintiff in his affidavit claims to be due. When property is seized on attachment, the court may allow the officer having charge thereof such compensation for his trouble and expenses in keeping the same as shall be reasonable and just. [655.]

**STATUTORY FORMS IN CIVIL ACTIONS.**

The following or equivalent forms may be used by justices of the peace in civil actions and proceedings under this chapter, to wit:

**WRIT OF ATTACHMENT.**

State of Washington,  
County of . . . . ., ss.

To the Sheriff or Any Constable of Said County:

In the name of the state of Washington, you are commanded to attach, and safely keep, the goods, chattels, moneys, effects and credits of C D (excepting such as the law exempts), or so much (thereof) as shall satisfy the sum of . . . . . dollars, with interest and cost of suit, in whosoever hands or possession the same may be found in your county, and to provide that the goods and chattels so attached may be subject to further proceeding thereon, as the law requires; and of this writ make legal service and due return.

Given under my hand this . . . day of . . . . ., 19 . . . .

J P,

Justice of the Peace.

The execution of the writ is made on personal property capable of manual, or hand, delivery, by taking into custody, and second, on stocks and shares which the defendant may have in any corporation, by notice to corporation.

**§ 234. EXECUTION OF WRIT.**

The sheriff to whom the writ is directed and delivered must execute the same without delay, as follows:

1. Personal property capable of manual delivery shall be attached by taking into custody;

2. Stock or shares, or interest in stock or shares, of any corporation, association, or company, shall be attached by leaving with the president or other head of the same, or the secretary, cashier or managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ. [659.]

## CHAPTER XIV.

## REPLEVIN.

- § 235. Form of affidavit.
- § 236. Justice's order for delivery.
- § 237. Execution.
- § 238. Defendant's counter-bond.
- § 239. Sureties—Their justification.
- § 240. The defendant's sureties.
- § 241. Claim of third party for property.
- § 242. Execution—Right to break into buildings.
- § 243. Execution—Officer shall keep and deliver chattel.
- § 244. Execution—The officer's return.

When a party claims the possession of personal property in the control of another party, he recovers the same by commencing an action for the recovery of the goods or their value, and at the same time may require the justice of the peace to issue a writ of replevin; an order directing the sheriff or constable to proceed to the place where the goods in dispute are lodged and take them into his possession. This is the action of replevin.

The plaintiff commences his suit in the way in which we have outlined for suits generally, and at some time before the defendant answers the complaint the plaintiff makes a prescribed affidavit concerning the property, and on that affidavit secures the order of replevin, securing the sheriff or constable by an indemnity bond, in a sum equal to twice the value of the disputed property.

The plaintiff in an action to recover the possession of personal property may, at the time of issuing such summons, or at any time before answer, claim the immediate delivery of such property as provided in this article. [1796.]

The usual practice is to make the affidavit for replevin and file it with the complaint. The affidavit is in the usual form and contains the following general averments:

**§ 235. FORM OF AFFIDAVIT.**

When a delivery is claimed, an affidavit shall be made by the plaintiff, or by someone in his behalf, showing:

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth;

2. That the property is wrongfully detained by the defendant;

3. The alleged cause of the detention thereof, according to his best knowledge, information, and belief;

4. That the same has not been taken for a tax, assessment, or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or if so seized, that it is by statute exempt from such seizure; and

5. The actual value of the property. [1797.]

**FORMS.**

**AFFIDAVIT FOR WRIT OF REPLEVIN.**

[Court and Cause.]

State of Washington,  
County of King,—ss.

Jonathan Edwards, being first duly sworn, on oath deposes and says: That he is the plaintiff [or agent for plaintiff and makes this affidavit on behalf of plaintiff] in the above-entitled action; that he is the owner of all and singular the property described in the complaint filed herein, to wit: One deal table, of the value of forty dollars; three chairs (leather), of the value of ten dollars each; that said property and every part thereof is wrongfully detained from plaintiff by Gordon Keep, the defendant above named, in the county of King; that the alleged cause of the detention thereof, according to the knowledge, information and belief of the affiant, is the following: The defendant claims to be entitled to the possession of said property by virtue of [here state nature of defendant's claim]; that said property has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under

execution or attachment against the property of the plaintiff; and that the value of said property is seventy dollars.

**JONATHAN EDWARDS.**

Notary Public, etc.

### UNDERTAKING IN REPLEVIN.

Whereas, A B, plaintiff, has commenced an action before J P, one of the justices of the peace in and for ..... county, against C D, defendant, for the recovery of certain personal property, of the value of ..... dollars, mentioned and described in the affidavit of the plaintiff, to wit: [Here set forth the property claimed.] Now, therefore, we, A B, plaintiff, and E F and G H, acknowledge ourselves bound unto C D in the sum of ..... dollars, for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff.

Dated the .... day of ....., 19.....

A B, E F, G H.

It will be seen from this that the essentials of replevin are the ownership by the plaintiff and the wrongful detention by the defendant, and the further fact that the property is not detained under legal seizure.

### § 236. JUSTICE'S ORDER FOR DELIVERY.

The justice shall thereupon, by an indorsement in writing upon the affidavit, order the sheriff or any constable of the county to take the same from the defendant and deliver it to the plaintiff upon receiving the proper bond. [1798.]

### FORM.

#### ORDER OF REPLEVIN.

State of Washington,  
County of ....., ss.

To the Sheriff or Any Constable of Said County:

In the name of the state of Washington, you are hereby commanded to take the personal property mentioned and described in the within affidavit, and deliver

the same to the plaintiff, upon receiving a proper undertaking, unless before such delivery, the defendant enter into a sufficient undertaking for the delivery thereof to the plaintiff, if delivery be adjudged.

Given under my hand this .... day of ....., 19.....

J P,  
Justice of the Peace.

The plaintiff has now started his action. He has made and filed his affidavit setting forth the above allegations, and the writ is now ready to be turned over to the sheriff or constable for execution. But the constable, acting even under proper orders, at least on their face, may make an illegal and wrongful levy, in which case the person injured may have an action against the officer for such illegal levy. To protect himself, therefore, the bond of two sureties is submitted to the constable, whereupon he proceeds to make the levy in the manner following:

## § 237. EXECUTION.

Upon the receipt of the affidavit and order, with a bond, executed by two or more sufficient sureties, approved by the sheriff or constable, to the effect that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the sheriff or constable shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, order and bond, by delivering the same to him personally, if he can be found within the county, or to his agent from whose possession the property is taken, or if neither can be found in the county, by leaving them at the usual abode of either within the county, with some person of suitable age and discretion; or if neither have any known place of abode in the county by putting them into the postoffice, directed to the defendant at the postoffice nearest to him. [1799.]

Within two days after the service of notice upon him, the defendant may require the restoration of the property in dispute, but must support his claim by giving a counter-bond, executed by two sureties, double the value of the property, securing the return of the chattels to the plaintiff if he be awarded them, and also securing payment to the plaintiff of what sum the defendant may be adjudged to owe him.

### **§ 238. DEFENDANT'S COUNTER-BOND.**

At any time before the delivery of the property to the plaintiff the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the officer a bond, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within two days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this article. [1801.]

### **§ 239. SURETIES—THEIR JUSTIFICATION.**

As we have seen, the bond is executed by two sureties and must be satisfactory to the officer indemnified by such bond. The general practice is to have the wife join the husband when a married man gives bond; both parties signing their names thereto and both bound thereon. It will be noticed that the bond secures the payment to the defendant of such sum which for any cause may be awarded him from the plaintiff, and, again, of course, he may rightfully detain the disputed property. It is therefore to his interest to see that the bondsmen are persons of sufficient responsibility to warrant accepting them, for he would not wish to have a judgment against an irresponsible bondsman. Whatever objections he may have, therefore, to the responsibility of the sureties for the plaintiff, he must give notice thereof to the officer within two days after service of order, bond and affidavit upon him.

The defendant may, within two days after the service of a copy of the affidavit, order and bond, give notice to the officer that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify upon one day's notice before the justice; and the officer shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they justify, or new sureties be substituted, and they justify. If the defendant except to the sureties he cannot reclaim the property as provided in the next section (i. e., § 238, above). [1800.]

#### § 240. THE DEFENDANT'S SURETIES.

The defendant's sureties on the counter-bond are also liable to objection by the plaintiff, and the plaintiff, on one day's notice, shall require them to justify before the justice.

The defendant's sureties, upon one day's notice to the plaintiff or his attorney, shall justify before the justice, and upon such justification the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties until they justify, or until the justification is complete or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time appointed, he shall deliver the property to the plaintiff. [1802.]

#### § 241. CLAIM OF THIRD PARTY FOR PROPERTY.

Where a third person claims the disputed property as his, the sheriff may require the plaintiff to give him a bond indemnifying him against the new claimant before he surrenders the property to the plaintiff.

If the property taken be claimed by any other person than the defendant, or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the ground of such title or right, and serve the same upon the officer before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim by a

bond executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent shall be valid against the officer, unless made as aforesaid, and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity. [1805.]

**§ 242. EXECUTION—RIGHT TO BREAK INTO BUILDINGS.**

If the property, or any part thereof, be concealed in a building or inclosure, the officer shall publicly demand its delivery; and if it be not delivered, he shall cause the building or inclosure to be broken open and take the property into his possession. [1803.]

**§ 243. EXECUTION—OFFICER SHALL KEEP AND DELIVER CHATTEL.**

When the officer shall have taken property as in this article provided, he shall keep it in a secure place, and deliver to the party entitled thereto, upon receiving his lawful fees for taking and his necessary expenses for keeping the same. [1804.]

**§ 244. EXECUTION—THE OFFICER'S RETURN.**

The officer shall return the order and affidavit with his proceedings thereon to the justice within five days after taking the property mentioned therein. [1806.]

**FORMS.**

**RETURN ON WRIT OF REPLEVIN.**

[Court and Cause.]

I hereby certify that the foregoing and within requisition, affidavit and bond came to my hands on the 5th day of June, 1912, and that thereupon on the 5th day of June, 1912, in the city of Seattle, King County, I took the following property described in said affidavit, to wit [here describe the property], into my possession and the same not having been demanded by the defend-

ant, or any third person, and no proper bond having been delivered to me by the defendant, and two days having elapsed since said taking and since the service of said requisition, affidavit and bond upon defendant, I have delivered the said property to the plaintiff; and I further certify that on the 5th day of June, 1912, in said county, I served the said requisition, affidavit and bond upon the within-named defendant, by delivering a true copy thereof to him personally then and there [or by delivering at the usual place of abode, mailing, etc.].

HENRY BADGE,  
Constable.

### INDEMNITY TO CONSTABLE AGAINST THIRD PERSON.

Whereas, L M claims to be the owner of, and have the right to possession of certain personal property, to wit [here describe it], which has been taken by J K, constable in ..... county, upon an execution by J P, justice of the peace in and for the county of ....., upon a judgment obtained by A B, plaintiff, against C D, defendant; now, therefore, we, A B, plaintiff, E F and G H, acknowledge ourselves bound unto the said J K, constable, in the sum of ..... dollars, to indemnify the said J K against such claim.

A B, E F, G H.

## CHAPTER XV.

## GARNISHMENT.

- § 245. Who may be garnished.
- § 246. Affidavit for writ of garnishment.
- § 247. Writ of.
- § 248. Writ to be indorsed.
- § 249. Service.
- § 250. Service binding on garnishee.
- § 251. Service upon bank.
- § 252. Answer of garnishee.
- § 253. Answer when names are uncertain.
- § 254. Answer—Pleading—Defense.
- § 255. Answer of garnishee controverted.
- § 256. Bond of defendant.
- § 257. Garnishee defendant discharged when.
- § 258. Garnishee to surrender property.
- § 259. Judgment on default of garnishee defendant.
- § 260. Judgment against garnishee on the answer.
- § 261. Execution of judgment against garnishee.
- § 262. Refusal of garnishee to deliver is contempt.
- § 263. Costs allowed garnishee on controverted answer.
- § 264. Garnishment of corporation.
- § 265. Conduct of sale.
- § 266. Sale conveys title.

Garnishment can be best explained by a simple illustration: Suppose that A owes B ten dollars and that B is working for C. A starts an action against B for the recovery of the ten dollars and as A knows that C owes B money for wages, he serves a writ of garnishment on C. This means that C must come into court on the return day, either in person or by his affidavit, and state how much money he owed B at the time the writ of garnishment was served upon him. Then if A gets judgment against B, he gets the money from C, if C owes B that much. If C ignores the writ of garnishment, he is liable to have judgment rendered against him in favor of A. A and B are the principals in the suit and C is called the garnishee. The appearance of the garnishee is called his "answer." Municipal corpora-

tions, cities, counties and states generally are not subject to garnishment.

“Generally speaking, it is a mode of attachment or execution, where money or property of a debtor in the hands of third persons is levied upon, and by subsequent proceedings in the court wherein the original action is pending, subjected to payment of the claim of a judgment creditor. Technically, it is a process in aid of writ of execution and attachment, whereby one not a party to the cause wherein the process issues is notified to appear in court and disclose whether he is indebted to, or has in his possession property belonging to the defendant in such cause, and if so, that he shall not pay such indebtedness nor surrender such property until further order of the court.” (Am. & Eng. 8-1097.)

#### § 245. WHO MAY BE GARNISHED.

Private corporations may be garnished. As we have seen, public or municipal corporations are not subjected to garnishment.

Attorneys at law may be garnished for money or property in their hands.

Persons acting as agents in the private sense, not as agents of municipal corporations.

The justice of the peace has authority to issue writs of garnishment. This was not always the case, but the bestowal of this authority upon him has proved of great assistance in the collection of honest debts.

The justice of the peace in the various precincts in the state may issue writs of garnishment, returnable to their respective courts, where the plaintiff sues for a debt which is just, due and unpaid; or where the plaintiff has a judgment wholly or partially unsatisfied in the court from which he seeks to have the writ of garnishment issued. [Sess. Laws 1911, c. 126, H. B. 2.]

As will be seen from this section, the writ of garnishment is issued upon the affidavit of the plaintiff or his attorney setting forth the fact that the debt is just and unpaid. This is a collateral action with the principal suit; the affidavit

generally accompanying the complaint and are filed together. The justice's docket gives one page to the complaint or action proper and the opposite page to the proceedings in garnishment.

#### § 246. AFFIDAVIT FOR WRIT OF GARNISHMENT.

Before the issuance of the writ of garnishment, the plaintiff, or someone in his behalf, shall make application therefor by affidavit, stating the facts authorizing the issuance of the writ, and that he has reason to believe and does believe that the garnishee is indebted to the defendant or that he has in his possession or under his control personal property or effects belonging to the defendant, or that the garnishee is a corporation, and that the defendant is the owner of shares of the capital stock thereof, and that the garnishment applied for is not sued out to injure either the defendant or the garnishee. [Laws 1911, c. 126, H. B. 2.]

#### FORM.

#### AFFIDAVIT FOR GARNISHMENT.

[Court and Cause.]

[Plaintiff.]

[Defendant.]

[Garnishee Defendant.]

State of Washington,  
County of King,—ss.

Simon Peuer, being first duly sworn, on oath deposes and says: That he is attorney for the plaintiff in the above-entitled action; that he makes this affidavit on behalf of the plaintiff for the purpose of securing the issuance of a writ of garnishment against the defendant directed to Richard Heyer as garnishee; that the plaintiff and this affiant have reason to believe, and do believe, that Richard Heyer, residing at Boonton, in King County, state of Washington, is indebted to Jonathan Quibble, the defendant above named, or that he has in his possession or under his control property or effects belonging to the defendant; and that garnishee defendant is a corporation, and defendant is the owner of ten shares of the capital stock thereof; that the plain-

tiff above named sues herein for a debt, and that the same is just, due and unpaid, and the garnishment hereby applied for is not sued out to injure either the defendant or said garnishee.

.....

Subscribed and sworn to before me this .... day of  
....., A. D. 19.....

.....,  
Notary Public for the State of Washington, Residing at  
Seattle in Said State.

The person to whom the writ of garnishment is directed is termed the "garnishee." The writ directs him to appear before the court on the same day and hour as the principal defendant is directed in the notice.

## § 247. WRIT OF.

When the foregoing requisites have been complied with, the justice of the peace shall, without additional fee, docket the case in the name of the plaintiff, as plaintiff, and of the garnishee as defendant, and shall immediately issue a writ of garnishment, directed to the garnishee, commanding him to appear before the justice who issues the writ, at a certain place, day and hour, which shall not be less than six nor more than twenty days from the date of the issuance of the writ, to answer on oath in what amount, if any, he was indebted to the defendant, and what personal property or effects, if any, of the defendant he had in his possession or under his control when such writ was served upon him, and where it appears from the affidavit for the writ that the garnishee is a corporation in which the defendant is the owner of shares, the writ of garnishment shall further require the garnishee to answer what number of shares, if any, the defendant owned in such corporation when such writ was served upon it. The writ of garnishment shall be served at least five days before the time for answer mentioned therein. [Laws 1911, c. 126, H. B. 2.]

## FORM.

## WRIT OF GARNISHMENT.

[Court and Cause.]

[Plaintiff.]

[Defendant.]

[Garnishee Defendant.]

The State of Washington to John Heyer, Greeting:

Whereas, in the justice court, Seattle Precinct, King County, state of Washington, before the undersigned justice of the peace, in a certain cause wherein Nathaniel Grumble is plaintiff and Jonathan Quibble is defendant, the plaintiff having a judgment [or claiming an indebtedness] against the said Jonathan Quibble of eighty dollars (\$80), besides interest from March 1, 1911, at 8 per cent per annum, and cost of suit, has applied for a writ of garnishment against you:

Now, therefore, you are hereby commanded to be and appear before the undersigned justice in his courtroom, number 602 Prefontaine Building, Seattle, King County, Washington, on the 12th day of December, 1912, at 9:30 o'clock in the forenoon, then and there to answer upon oath in what amount, if any, you are indebted to the said Jonathan Quibble when this writ was served upon you, and what effects, if any, of the said Jonathan Quibble you had in your possession or under your control when this writ was served upon you, and further to answer what number of shares, if any, said Jonathan Quibble owned in the Hirsute Cultural Company, a corporation, when this writ was served upon you.

Dated this .... day of ....., 19.....

.....,  
Justice of the Peace, Seattle Precinct, King County,  
Washington.

Indorsed by attorney for plaintiff.

.....  
Office and postoffice address: ..... Building, Seattle,  
King County, Washington.

Main .....; Ind. .... (phone numbers).

State of Washington,  
County of King,—ss.

I hereby certify that the foregoing is a true copy of the original writ of garnishment in the above-entitled cause.

Dated this .... day of ....., A. D. 19.....  
.....

The writ should be indorsed with the name and address of the plaintiff's attorneys, and, in the larger precincts, such writs also carry the telephone number of the attorney's office.

#### § 248. WRIT TO BE INDORSED.

The writ of garnishment shall be dated and signed by the justice of the peace, and the name and office address of the attorney for the plaintiff shall be indorsed thereon, or in case the plaintiff has no attorney, then the name and address of the plaintiff shall be indorsed thereon. The writ, when so issued and indorsed, shall be delivered by the justice of the peace who issues it to the party applying therefor, or to his attorney. [1827.]

The practice generally is for the attorney to fill out the writ of garnishment himself and secure the signature of the justice when the writ is filed. He then serves the garnishee with a copy of the writ.

#### § 249. SERVICE.

The writ of garnishment may be served by the sheriff or any constable of the county in which the garnishee lives, or it may be served by any citizen of the state of Washington, over the age of twenty-one years and not a party to the action in which it is issued, in the same manner as a summons in an action is served. And in case such writ is served by an officer, such officer shall make his return thereon, showing the time, place and manner of service and noting thereon his fees for making such service and shall sign his name to such return. In case such service is made by any person other than an officer, such person shall attach to the original writ his affidavit showing his qualifications to make such service and the time, place and manner of making service, but

no fee shall be allowed for the service of such writ unless the same is served by an officer. [1828.]

The effect of the service of the writ of garnishment is to compel the garnishee to hold all funds and property in his hands until the trial and adjudication of the rights of the parties to the main action.

#### § 250. SERVICE BINDING ON GARNISHEE.

From and after the service of such writ of garnishment, it shall not be lawful for the garnishee to pay to the defendant any debt owing to him at the time of such service, or to deliver to him any personal property or effects belonging to the defendant in his possession or under his control at the time of such service, nor shall the garnishee, if it be a corporation in which the defendant is alleged to be the owner of shares, permit or recognize any sale or transfer of any shares owned by said defendant at the time of such service; and any such payment, delivery, sale or transfer shall be void and of no effect as to so much of said debt, personal property or effects or shares as may be necessary to satisfy the plaintiff's demand. [1830.]

When garnishing a bank, the procedure is a little different. A written statement must accompany the writ of garnishment, in which statement the plaintiff sets forth the residence and business of the defendant, and unless this is done the bank cannot be held liable for any payment it may make to the defendant.

#### § 251. SERVICE UPON BANK.

In cases where the writ of garnishment issued under the provisions of this act is directed to a corporation carrying on a general banking business in the state of Washington, the plaintiff, in addition to serving the writ of garnishment upon said garnishee, shall at the same time and as a part of said service deliver to said garnishee a statement in writing signed by the plaintiff or his attorney, stating the place of residence of the defendant and his business, occupation, trade or profession, and unless such statement is so delivered with said writ of garnishment, the service of said writ shall not be deemed complete and the garnishee shall not be held liable thereon. [1829.]

The next step is for the garnishee to make his answer to the writ. The answer must be a signed writing, and shall answer truly concerning the things inquired of in the writ.

### § 252. ANSWER OF GARNISHEE.

The answer of the garnishee shall be in writing and signed and verified as other pleadings and shall make true answers to the several matters inquired of in the writ of garnishment and shall be served upon the plaintiff or his attorney and filed with the justice of the peace who issued said writ. [1832.]

### FORM.

#### ANSWER OF GARNISHEE DEFENDANT.

[Court and Cause.]

[Plaintiff.]

[Defendant.]

[Garnishee Defendant.]

Comes now the above-named garnishee defendant and answering the writ of garnishment herein avers:

#### I.

That said writ was served upon me [us] on the 3d day of December, 1912, at 4 o'clock P. M.

#### II.

That at the time of service of said writ I was indebted to defendant in the sum of forty dollars and had no personal property and effects in my possession or in my control, and defendant owned no shares in the Hirsute Cultural Company, a corporation.

.....,  
Garnishee Defendant.

State of Washington,  
County of King,—ss.

John Heyer, the garnishee defendant herein, first duly sworn, on oath deposes and says, that he is the garnishee defendant above named; that he has read the foregoing answer, knows the contents thereof and believes the same to be true.

.....

Subscribed and sworn to before me this .... day of  
 ....., 19....

Notary Public for the State of Washington, Residing at  
 Seattle in Said State.

### § 253. ANSWER WHEN NAMES ARE UNCERTAIN.

Where the garnishee in his answer states that he was indebted or had personal property or effects in his possession under his control at the time of the service of the writ of garnishment upon him to a person of the same or similar name to the defendant, and stating the place of business or residence of said person, and that he does not know whether or not such person is the same person as the defendant, and prays the court to determine whether or not the person to whom he was indebted or whose personal property or effects he had in his possession is the same person as the defendant, the court, before rendering judgment against the garnishee defendant as hereinbefore provided, shall take proof as to the identity of said persons, and if he should find therefrom that they are not one and the same individual, the garnishee shall be discharged and shall have and recover his costs against the plaintiff; and if he should find that said persons are one and the same individuals, he shall make a similar judgment as to payment of the money or the delivery of personal property and effects and as to costs of the garnishee as hereinbefore provided, where the garnishee is held upon his answer. Before any such hearing on the question of identity is had, the plaintiff shall cause the justice of the peace to issue a citation directed to the person to whom the garnishee answers he was indebted or whose personal property or effects the garnishee has answered he had in his possession or under his control, commanding him to appear before the justice of the peace from which it is issued within ten days after the service of the same upon him, and to answer on oath whether or not he is the same person as the defendant in said action. Said citation shall be dated and attested in like manner as a writ of garnishment and be delivered to the plaintiff or his attorney and shall be served in the same manner as a summons in an action is served. If upon the hearing in this section provided for, the court shall find that the defendant or judgment debtor is the same person as the person to whom the garnishee defendant was indebted,

or whose personal property or effects said garnishee defendant had in his possession or under his control, it shall be sufficient answer to any claim of said person against the garnishee founded on any indebtedness of such garnishee or on the possession by him of any personal property or effects for the garnishee to show that such indebtedness was paid or such personal property or effects delivered under the judgment of the court in accordance with the provisions of this act. [1845.]

#### § 254. ANSWER—PLEADING—DEFENSE.

The garnishee need not in his answer set forth any defense or claim and exemptions which may be due the defendant. The defendant's privileges in this respect are not interfered with by the operation of this statute.

It shall not be necessary for the garnishee to plead or set forth in his answer any defense which the defendant might have to the cause of action against him, nor to plead or set forth in his answer any claim of exemption which may be available to the defendant, but this section shall not be construed to preclude the defendant from pleading, claiming or asserting any exemption which may be available to him under the laws of the state of Washington now in force or hereafter to be enacted. [1846.]

#### § 255. ANSWER OF GARNISHEE CONTROVERTED.

When the plaintiff thinks that the garnishee has not made complete or truthful answer to the writ, he shall so state to the justice, who will try the issue thus raised as in other cases.

If the plaintiff should not be satisfied with the answer of the garnishee, he shall state such fact to the justice of the peace, who shall thereupon enter the fact in his docket, and an issue shall be formed under the direction of the court and tried as other cases: Provided, however, no pleading shall be necessary on such issue other than the affidavit of the plaintiff, the answer of the garnishee and the statement of the plaintiff that he is not satisfied with the answer. [1842.]

The writ of garnishment shall be discharged upon the filing of a bond, executed to the plaintiff, that the defend-

ant will pay the judgment that may be rendered against him. The point of this provision is this: that garnishment is only a means of securing the payment of a debt—if the defendant puts up a bond with approved sureties, the protection is the same as on the writ.

#### **§ 256. BOND OF DEFENDANT.**

If the defendant in the principal action causes a bond to be executed to the plaintiff, with sureties, to be approved by the justice of the peace issuing the writ, conditioned that he will pay any judgment that may be rendered against him in favor of the plaintiff in said action, and shall file said bond with said justice of the peace, the writ of garnishment shall, upon the filing and approval of said bond, be immediately discharged, and all proceedings had thereunder shall be vacated and said justice shall issue and deliver to said defendant a certificate to the effect that said writ of garnishment has been discharged, and upon the delivery of said certificate to the garnishee he shall be discharged of any further liability under said writ: Provided, that the garnishee shall not be thereby deprived from recovery of costs in said proceeding to which he would otherwise be entitled under this act. [1831.]

#### **§ 257. GARNISHEE DEFENDANT DISCHARGED WHEN.**

When it appears from the sworn answer of the garnishee that he is not indebted to the defendant and has no personal property under his control, he is discharged.

Should it appear from the answer of the garnishee that he was not indebted to the defendant when the writ of garnishment was served upon him and that he had not in his possession or under his control any personal property or effects of the defendant when the writ was served; and when the garnishee is a corporation in which the defendant is alleged to be the owner of shares of stock, if it shall further appear from such answer that the defendant was not the owner of any such shares when the writ was served, and should the answer of the garnishee not be controverted as hereinafter provided, the court shall enter judgment discharging the garnishee. [1833.]

**§ 258. GARNISHEE TO SURRENDER PROPERTY.**

Should it appear from the answer of the garnishee, or should it be made otherwise to appear, as hereinafter provided, that the garnishee had in his possession or under his control when the writ was served upon him, any personal property or effects of the defendant liable to execution, the court shall render a decree requiring the garnishee to deliver up to the justice on demand, such personal property or effects, or so much of them as may be necessary to satisfy the plaintiff's claim. In cases where a judgment has been rendered in the principal action, such personal property or effects may be sold in like manner as other property is sold upon execution on a judgment. In cases where judgment has not been rendered in the principal action, the justice of the peace shall retain such personal property or effects in his possession until the rendition of the judgment therein, and in case judgment is entered in such principal action in favor of the plaintiff, said goods, or effects, or sufficient of them to satisfy said judgment, may be sold in like manner as other property is sold upon an execution issued on a judgment. In case judgment shall be rendered in such action against the plaintiff and in favor of the defendant, such effects and personal property shall be by the justice returned to the defendant. [1837.]

**§ 259. JUDGMENT ON DEFAULT OF GARNISHEE DEFENDANT.**

If the plaintiff recover judgment against the defendant in the main action, judgment shall be had against the garnishee if the garnishee is in default; that is, if he has not made and served his sworn answer as provided in these statutes. Such judgment is not operative against the garnishee until judgment has been rendered in the principal action.

Should the garnishee fail to answer the writ within the time prescribed therein, the court shall, upon application of the plaintiff therefor, declare and enter the default of the garnishee and shall thereafter render judgment as follows: In case the plaintiff has a judgment against the defendant, judgment shall be rendered against the garnishee for the full amount of such judgment with all accruing interest and costs.

In case judgment has not been rendered in the principal action at the time when the default of the garnishee is declared and entered, final judgment shall not be rendered against the garnishee until the final judgment in the principal action is entered, and if the plaintiff recovers judgment against the defendant the court shall enter judgment against the garnishee for full amount of the judgment awarded to the plaintiff against the defendant; but if the plaintiff fails to recover judgment against the defendant, the garnishee shall be discharged without costs. [Laws 1911, c. 126, H. B. 2.]

### FORM.

This cause coming on regularly to be heard on this .... day of ....., 19...., at 9:30 A. M., plaintiff.. appearing by ..... attorney, .....; and it appearing to the court by affidavit of ..... that the writ of garnishment in this cause was duly and regularly served upon the garnishee defendant.. herein .....; and the court having waited one full hour after the time set in said writ of garnishment for the hearing, and the garnishee defendant.. having failed to appear or answer; and it further appearing that the plaintiff.. is entitled to an order of default against the garnishee defendant.. herein, and a judgment having been entered against the principal defendant in the main action, and the court being fully advised in the premises;

It is ordered, adjudged and decreed, that the default of the garnishee defendant.. ..... be, and the same is hereby entered, and that the plaintiff.. herein do have and recover of and from the garnishee defendant.. herein ..... the sum of ..... dollars (\$.....), together with the costs of this garnishment, taxed as follows, to wit: Justice's fee \$.....; constable fee, \$.....; total costs, \$.....; total of judgment, \$.....

Dated this .... day of ....., 19....

.....,  
Justice of the Peace.

### § 260. JUDGMENT AGAINST GARNISHEE ON THE ANSWER.

The plaintiff secures judgment against the garnishee when the garnishee's answer shows that he is indebted to the de-

fendant, judgment being first awarded the plaintiff in the principal action.

Should it appear from the answer of the garnishee, or should it be otherwise made to appear as hereinafter provided, that the garnishee was indebted to the defendant in any amount when the writ of garnishment was served upon him, the court shall render judgment for the plaintiff against such garnishee for the amount so admitted or found to be due from the garnishee, less the amount of the costs awarded to the garnishee, unless the amount so admitted or found to be due shall exceed the amount of the judgment rendered or thereafter rendered in favor of the plaintiff against the defendant, with interest and costs in which case it shall be for the amount of such judgment rendered or thereafter to be rendered, with interest and costs: Provided, however, that judgment shall not be rendered against the garnishee until the final judgment in the principal action is entered, and if the plaintiff fails to recover judgment against the defendant the garnishee shall be discharged and shall have and recover his costs against plaintiff: Provided, however, if it shall appear from the answer of the garnishee and the same is not controverted, or if it shall appear from the trial hereinafter provided for that the garnishee was indebted to the defendant in any sum at the time of the service of said writ, but that said indebtedness is not matured and is not due and payable, the court shall make an order requiring the garnishee to pay such sum into court when the same becomes due, less the amount of the costs awarded to the garnishee, the date when such payment is to be made to be specified in said order, and in default thereof that judgment shall be entered against the garnishee for the amount of such indebtedness so admitted or found to be due. In case the garnishee shall pay said sum at the time specified in said order, said payment shall operate as a discharge; otherwise judgment shall be entered against him as above provided: Provided, further, that if judgment shall be rendered in favor of the principal defendant, or if any judgment rendered against him shall be satisfied prior to the date of payment specified in said order, the garnishee shall not be required to make the payment hereinbefore provided for, nor shall any judgment in such case be against him. [1835.]

### § 261. EXECUTION OF JUDGMENT AGAINST GARNISHEE.

Executions on judgment against the garnishee may generally be issued in the same manner as the execution of any other civil judgment issuing from the justice's court.

Execution may be issued on the judgment against the garnishee herein provided for in like manner as upon any other judgment. The amount made upon any such execution shall be paid by the officer executing the same to the justice of the peace from whom such execution was issued, and shall be applied to the satisfaction of such judgment, interest and costs and also to the satisfaction of the judgment against the defendant, and the surplus, if any, shall be paid to the garnishee. [1836.]

### § 262. REFUSAL OF GARNISHEE TO DELIVER IS CONTEMPT.

Should the garnishee adjudged to have effects or personal property of the defendant in his possession or under his control, as provided in the preceding section [1837], fail or refuse to deliver them to the justice on such demand the garnishee shall, on motion of the plaintiff, be cited to show cause why he should not be attached for contempt of court for such failure or refusal, and should the garnishee fail to show some good and sufficient excuse for such failure and refusal he shall be fined for such contempt and imprisoned until he shall deliver such personal property or effects. [1838.]

### § 263. COSTS ALLOWED GARNISHEE ON CONTROVERTED ANSWER.

An attorney's fee and costs are allowed the garnishee when the answer is controverted and he is discharged.

Where the answer is controverted and the garnishee is subsequently discharged upon the trial thereof, his costs, including a reasonable attorney's fee to be fixed by the court shall be taxed against the plaintiff; and if the garnishee upon his answer being controverted by the plaintiff is held liable to an extent greater than the liability admitted in his answer, the costs of the plaintiff upon such proceeding including a reasonable attorney's fee to be fixed by the court, shall be taxed against the garnishee. [1843.]

**§ 264. GARNISHMENT OF CORPORATION.**

When a corporation is garnished and the defendant is the owner of shares of stock therein, the court may order the same sold under execution; which sale shall convey all the right, title and interest of the defendant in and to said stock to the purchaser at such sale.

Where the garnishee is a corporation and it appears by the answer or otherwise that the defendant was, when the writ of garnishment was served upon it, the owner of any shares of stock in such corporation, the court shall render a decree ordering the sale under execution in favor of the plaintiff against the defendant of such shares of the defendant in such corporation, or so much thereof as may be necessary to satisfy such execution. [1839.]

**§ 265. CONDUCT OF SALE.**

The sale so ordered shall be conducted in all respects as other sales of personal property under execution, and the officer making such sale shall execute a transfer of such shares to the purchaser with a brief recital of the judgment of the court under which the same was sold. [1840.]

**§ 266. SALE CONVEYS TITLE.**

Such sale shall be valid and effectual to pass to the purchaser all the right, title and interest which the defendant had in such shares of stock, and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the sale had been made by the defendant himself. [1841.]

## CHAPTER XVI.

## NE EXEAT.

- § 267. General authority.
- § 268. Bond.
- § 269. Venue.
- § 270. Defendant discharged on recognizance.
- § 271. Writ for any surety.
- § 272. Proceedings before justice.
- § 273. Remedy by writ of habeas corpus.

This is a process of arrest and bail arising upon the threatened breach of a contract and consequent loss of property, credits and moneys. It is a writ issued by the justice of the peace upon the affidavit and bond of the complainant, and requires the body of the defendant to be arrested, in order that the defendant may be required to enter into a bond that he will personally appear at the time of trial. The complaint in the action is filed with the affidavit for the order of arrest and bail.

**§ 267. GENERAL AUTHORITY.**

Action may be commenced upon any agreement in writing before the time for the performance of the contract expires, when the plaintiff or his agent shall make and file an affidavit with the proper justice that the defendant is about to leave the state without performing or making provisions for the performance of the contract, taking with him property, moneys, credits or effects subject to execution with intent to defraud plaintiff. [778.]

The plaintiff must give bond before the order of arrest issues that he will pay the defendant such damages and costs as he shall wrongfully sustain by reason of the action.

**§ 268. BOND.**

At the time of filing the affidavit the plaintiff shall also file his complaint in the action, and thenceforth the action shall proceed as other actions at law, except as otherwise provided in this chapter. Upon such affidavit

and complaint being filed, the justice shall issue an order of arrest and bail, directed to the sheriff, or any constable of the county, which shall be issued, served and returned in all respects as such orders in other cases; before such order shall issue, the plaintiff shall file in the office of the justice a bond, with sufficient surety to be approved by the justice, conditioned that the plaintiff will pay the defendant such damages and costs as he shall wrongfully sustain by reason of the action, which sureties shall justify as bail upon an arrest. [779.]

#### § 269. VENUE.

The county where defendants are found may be the venue.

The affidavit and bond may be filed and proceedings had in any county where the defendants may be found. [784.]

#### § 270. DEFENDANT DISCHARGED ON RECOGNIZANCE.

The sheriff shall require the defendant to enter into a bond, with sufficient surety, personally to appear within the time allowed by law for answering the complaint, and to abide the order of the court; and in default thereof the defendant shall be committed to prison until discharged in due course of law; such special bail shall be liable for the principal, and shall have a right to arrest and deliver him up, as in other cases, and the defendant may give other bail. Instead of giving special bail as above provided, the defendant shall be entitled to his discharge from custody, if he will secure the performance of the contract to the satisfaction of the plaintiff. [780.]

#### § 271. WRIT FOR ANY SURETY.

This proceeding may be had in favor of any surety or other person jointly bound with defendant. It may also be prosecuted by the person in whose favor the contract exists against any one or more of the persons bound thereby, upon filing such affidavit, when the co-contractors are nonresidents or probably insolvent, or at the request of any of them where they are residents and solvent. [781.]

**§ 272. PROCEEDINGS BEFORE JUSTICE.**

The proceedings provided for in this chapter may be had before justices of the peace in all cases within their jurisdiction. [783.]

**§ 273. REMEDY BY WRIT OF HABEAS CORPUS.**

The defendant may have the same remedy by writ of habeas corpus as in other cases of arrest and bail. [782.]

# CRIMINAL JURISDICTION OF JUSTICE OF THE PEACE.

## CHAPTER XVII.

### PROCEDURE.

- § 274. Warrant issued on complaint.
- § 275. Jurisdiction of criminal offenses.
- § 276. Bail with or without examination.
- § 277. Hearing and commitment.
- § 278. Offense in presence of justice.
- § 279. Plea of guilty to any offense.
- § 280. Necessity of hearing.
- § 281. Trial by jury and magistrate.
- § 282. Punishment—Adequate and inadequate.
- § 283. Injured party as witness.
- § 284. Continuance.
- § 285. Recognizance of witnesses.
- § 286. Sureties required of witnesses, when.
- § 287. Recognizance for witnesses not *sui juris*.
- § 288. Judgment includes fine and costs.
- § 289. Bond for stay of execution.
- § 290. Right of appeal to superior court.
- § 291. Recognizance for witnesses on appeal.
- § 292. Defendant not to advance fees of appeal.
- § 293. Examination upon complaint.
- § 294. Trial when justice has jurisdiction of offense.
- § 295. Bail when justice has not jurisdiction.
- § 296. Recognizance of witnesses.
- § 297. Deposition to be written and signed.
- § 298. Record to be transcribed to superior court.
- § 299. Suit against witness on the bond.
- § 300. Costs to be forwarded.
- § 301. Complainant pays costs for malicious complaint.
- § 302. Compound of misdemeanors.

The justice of the peace exercises criminal jurisdiction as a committing magistrate, that is, to hold the offender over to trial in the superior court, and also as magistrate with authority to convict and punish within certain prescribed

limits. The punitive authority of the justice of the peace in his criminal practice is limited to fining the offender one hundred dollars, and he may inflict a prison sentence to the extent of thirty-three days.

Unless the crime or offense be committed in the presence of some officer of the law, or some person who shall immediately apprehend the offender, warrants for the arrest of the person are issued generally upon the sworn complaint of some third person.

### § 274. WARRANT ISSUED ON COMPLAINT.

Any justice shall, on complaint on oath in writing before him, charging any person with the commission of any crime or misdemeanor, of which he has jurisdiction, issue a warrant for the arrest of such person, and cause him to be brought forthwith before him for trial. [1925.]

### STATUTORY FORMS.

[In Criminal Proceedings.]

The following or equivalent forms may be used by justices of the peace in criminal proceedings:

### WARRANT.

The State of Washington,  
..... County,—ss.

To the Sheriff or Any Constable of Said County:

Whereas, A B has this day complained in writing under oath to the undersigned, one of the justices of the peace in and for said county, that on the .... day of ....., 19...., at ....., in said county [here insert the substance of the complaint whatever it may be]; therefore, in the name of the state of Washington, you are commanded forthwith to apprehend the said C D and bring him before me, to be dealt with according to law.

Given under my hand this .... day of ....., 19....

J P,  
Justice of the Peace.

**In Justice's Court.**

**Before Fred C. Brown, Justice of the Peace in and for  
Seattle Precinct, King County, State of Washing-  
ton.**

No. ....

The State of Washington,	}
Plaintiff,	
v.	
.....,	
Defendant,	}

**BENCH WARRANT.**

State of Washington,  
County of King,—ss.

The State of Washington to the Sheriff or Any Con-  
stable of Said County, Greeting:

Whereas, a bench warrant has this day been ordered  
by the court to issue for .....

Therefore, in the name of the state of Washington  
you are commanded forthwith to apprehend the said  
..... and bring him or her before this court to be  
dealt with according to law.

Given under my hand this .... day of .....,  
19.....

Justice of the Peace, in and for <sup>.....,</sup> Seattle Precinct, King  
County, Wash.

No. .... In Justice's Court. Before Fred C. Brown,  
Justice of the Peace, Seattle Precinct, King County,  
State of Washington. The State of Washington, Plain-  
tiff, v. ...., Defendant. Bench Warrant. Filed  
....., 19....., Justice of the Peace, Seattle  
Precinct, King County, Washington.

**§ 275. JURISDICTION OF CRIMINAL OFFENSES.**

It should be noted that the jurisdiction of criminal matters,  
like that of civil matters, is coextensive with the limits of  
the respective counties.

The warrant having been issued, the defendant may be  
pursued thereon in any part of the state.

If any person against whom a warrant may be issued for an alleged offense, committed in any county, shall either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county in this state, and for that purpose may command, aid, and exercise the same authority as in his own county. [1950.]

The justice may allow the arrested person to enter his recognizance for his appearance in the superior court having jurisdiction of the offense.

### § 276. BAIL WITH OR WITHOUT EXAMINATION.

The magistrate before whom such accused person shall be brought, when the offense is bailable, may, at the request of such person, with or without examination, allow him to enter into recognizance with sufficient sureties, to be approved by the magistrate, conditioned for his appearance in the superior court having jurisdiction of the offense. [1951.]

### FORM.

#### In Justice's Court.

Before John E. Carroll, Justice of the Peace, in and for  
Seattle Precinct, King County, State of Washing-  
ton.

No. ....

The State of Washington,	}
Plaintiff,	
v.	
.....,	
Defendant.	}

### RECOGNIZANCE—BAIL BOND.

State of Washington,  
County of King,—ss.

Whereas, upon an examination before John E. Carroll, a justice of the peace in and for said King County, of the complaint of ....., charging ..... with the crime of ....., it did appear to said justice that there is probable cause to believe that said ..... did

commit said crime; and whereas, said justice of the peace has ordered said ..... to enter into recognizance, with sufficient sureties, for ..... appearance in the superior court of said county of King to answer said charge.

Now, therefore, we ....., as principal, and ..... and ....., as sureties, acknowledge ourselves, and our and each of our heirs, executors and administrators, jointly and severally bound unto the state of Washington, in the full sum of ..... dollars, to be paid to the state of Washington.

On condition, however, that if the said ..... shall appear in said superior court of King County to answer said charge whenever the same shall be prosecuted, and at all times, until discharged according to law, render ..... amenable to the orders and process of said superior court, and, if convicted, render ..... in execution of the judgment of said court, then this obligation shall become void, otherwise it shall remain in full force and virtue.

Signed and sealed this .... day of ....., A. D. 19.....

..... [Seal]  
 ..... [Seal]  
 ..... [Seal]

State of Washington,  
 County of King,—ss.

..... and ....., each being duly sworn, each for himself on oath says: I am a resident of said county of King; I am not a counselor or attorney at law, clerk of the superior court, or other officer of such court, and am worth the sum of ..... dollars, over and above all debts and liabilities, and exclusive of property exempt from execution.

.....  
 .....

Subscribed and sworn to before me this .... day of ....., A. D. 19....

.....  
 Justice of the Peace, Seattle Precinct, King County,  
 State of Washington.

No. .... In Justice's Court. Before John E. Carroll, Justice of the Peace, Seattle Precinct, King County, State of Washington. State of Washington, Plaintiff, v. ...., Defendant. Recognizance—Bail Bond. Filed

and approved this .... day of ....., 19.... ,  
 Justice of the Peace. ...., Attorney for .....,  
 ..... Building, Seattle, Wash.

But if the defendant does not enter into recognizance, the magistrate shall proceed to hear and examine the complaint.

## § 277. HEARING AND COMMITMENT.

If the defendant shall not enter into recognizance with sureties the magistrate shall proceed to hear and examine the complaint, and may adjourn the examination from time to time, not exceeding in all ten days from the time such defendant shall have been brought before him, and in case of such adjournment, the magistrate may, if the offense be bailable, take a recognizance with sufficient sureties for the appearance of the defendant at such further examination; and if he fail to enter into such recognizance, he shall be ordered into custody until the time appointed for such examination. [1952.]

### FORMS.

#### COMMITMENT.

The State of Washington,  
 County of .....,—ss.

To Any Constable and the Keeper of the County Jail of  
 Said County:

Whereas, at a justice's court held at my office in said county for the trial of C D for the offense herein-after stated, the said C D was convicted of having on the .... day of ....., 19...., in said county, committed the crime [here state the offense], and upon conviction the said court did adjudge and determine that the said C D should be imprisoned in the county jail of said county for ..... days, therefore you, the said constable, are commanded in the name of the state of Washington forthwith to convey and deliver the said C D to the said keeper; and you, the said keeper, are hereby commanded to receive the said C D into your custody in said jail, and him there safely keep until the expiration of said ..... days, or until he shall thence be discharged by due course of law.

Dated this .... day of ....., 19....

J P,  
 Justice of the Peace.

In the Justice's Court.

Before ....., Justice of the Peace in and for Seattle  
Precinct, King County, State of Washington.

State of Washington, }  
Plaintiff, }  
v. }  
....., }  
Defendant. }

State of Washington,  
County of King,—ss.

The State of Washington, to the Sheriff of King County,  
Washington, or to Any Constable of Said County:

Whereas, the above-named defendant.., arrested  
and brought before me charged with the crime of  
....., having failed and refused to give and furnish  
the required bail in the sum of \$ ..... for appearance  
before me on the .... day of ....., 19...., at ....  
o'clock ....M., that being the time set by me for a  
hearing on said charge:

Now, therefore, this is to command and direct that  
said ....., defendant.. aforesaid, shall forthwith  
be delivered and surrendered into the care and custody  
of said sheriff of King County, to be by him received  
and safely kept and confined in the jail of said county,  
and on the date and at the time above specified for  
the hearing on said charge, or at such other dates  
and times as this court may direct, said sheriff shall  
have, bring and return said defendant.. into this court  
for such hearing, and at all times retain the full custody  
and control of said defendant.. until discharged or  
released by due course of law.

Given under my hand this .... day of ....., A. D.  
19.....

.....,  
Justice of the Peace.

RETURN.

Received this commitment with the within named  
prisoner, on the .... day of ....., A. D. 19...., and  
on the same day, I committed said prisoner to the custody  
of the jail-keeper named in said commitment, with whom

I left at the same time a certified copy of this commitment.

Dated .... day of ....., A. D. 19.....

.....,  
 Sheriff of King County.  
 By .....,  
 Deputy.

In the Justice Court, Seattle Precinct, King County.  
 Temporary Commitment. State of Washington, Plaintiff, v. ...., Defendant. Preliminary Hearing.  
 Filed ....., A. D. 19....., Justice of the Peace.

The justice may by verbal direction cause the arrest of any offender committing an offense in view of the justice. The most common form of this is contempt in the justice's own court.

#### § 278. OFFENSE IN PRESENCE OF JUSTICE.

When any offense is committed in view of any justice he may, by verbal direction to any constable, or if no constable be present, to any citizen, cause such constable or citizen to arrest such offender, and keep him in custody for the space of one hour, unless such offender shall sooner be taken from custody by virtue of a warrant issued on complaint on oath. But such person so arrested, shall not be confined in jail, nor put upon any trial, until arrested by virtue of such warrant. And on the return of any warrant issued by him, it shall be the duty of the justice to docket the cause, and, unless continuance be granted, forthwith to hear and determine the cause, and either acquit, convict and punish or hold to bail the offender, if the offense be bailable and prove to be one which should be tried in the superior court, or in default of bail, as the facts and law may justify. [1926.]

The accused may plead guilty to any offense charged.

#### § 279. PLEA OF GUILTY TO ANY OFFENSE.

The defendant may plead guilty to any offense charged. [1929.]

**§ 280. NECESSITY OF HEARING.**

No justice shall assess a fine, or enter a judgment thereon until a witness or witnesses have been examined to state the circumstances of the transaction. [1931.]

**CERTIFICATE OF CONVICTION.**

The State of Washington,  
County of .....—ss.

At a justice's court held at my office in said county before me, one of the justices of the peace in and for said county, for the trial of C D for the offense hereinafter stated, the said C D was convicted on the .... day of ....., 19...., in said county, committed [here insert the offense] and upon conviction the said court did adjudge and determine that the said C D should pay a fine of ..... dollars, [or be imprisoned as the case may be] and the said fine has been paid to me.

Given under my hand this .... day of .....,  
19.....

J P,  
Justice of the Peace.

Trial by six or a less number of jurors may be agreed upon by the state and the accused.

**§ 281. TRIAL BY JURY AND MAGISTRATE.**

In all trials for offenses within the jurisdiction of a justice of the peace, the defendant or the state may demand a jury, which shall consist of six, or a less number, agreed by the state and accused, to be impaneled and sworn as in civil cases; or the trial may be by the justice. When the complaint is for a crime or misdemeanor in the exclusive jurisdiction of the superior court, the justice hears the case as a committing magistrate, and no jury shall be allowed. [1927.]

**§ 282. PUNISHMENT—ADEQUATE AND INADEQUATE.**

Such justice or jury, if they find the prisoner guilty, shall assess his punishment; or, if, in their opinion, the punishment they are authorized to assess is not adequate to the offense, they may so find, and in such case the justice shall order such defendant to enter recognizance to appear in the superior court of the

county, and shall also recognize the witnesses, and proceed as in proceedings by a committing magistrate. [1928.].

When a particular person has been injured by the offense of the defendant, the injured person is to be summoned as a witness in the cause.

### **§ 283. INJURED PARTY AS WITNESS.**

In all cases arising under this chapter, if the offense charged involve injury to a particular person who is within the county, it shall be the duty of the justice of the peace to summon the injured person, and all others whose testimony may be deemed material, as witnesses at the trial, and to enforce their attendance, by attachment, if necessary. [1930.]

Continuances may be granted in criminal cases on the same rules as in civil actions.

### **§ 284. CONTINUANCE.**

Continuance may be granted, either on application of the defendant or the prosecuting witness, under the same rules as in civil cases; the cost of such continuance shall abide the event of the prosecution in all cases, and the justice shall recognize the defendant and the witnesses to appear from time to time, in the same manner as is provided in other criminal examinations before him. [1932.]

The witnesses where the defendant is held or committed are recognized to appear in the superior court against the defendant.

### **§ 285. RECOGNIZANCE OF WITNESSES.**

Where the person arrested is held to bail, or committed to jail or forfeits his recognizance, the magistrate shall recognize the witnesses for the prosecution to be and appear in the superior court to which the party is recognized, bailed, or committed, whenever their attendance shall be required. [1959.]

**FORM.**

**In the Justice's Court.**

**Before John E. Carroll, Justice of the Peace in and for  
Seattle Precinct, King County, State of Washing-  
ton.**

No. ....

The State of Washington,	}
Plaintiff,	
v.	
.....,	
Defendant.	

**WITNESS—COMMITMENT.**

State of Washington,  
County of King,—ss.

**To Any Constable and the Keeper of the Jail of Said  
County, Greeting:**

Whereas, at a justice court, held at my office in said county for the trial of ..... for the offense hereinafter stated, the said ..... was convicted of having on the .... day of ....., 19...., in said county, committed the crime of ....., and it appearing to the court that ....., prosecuting witness, and ..... and ..... are necessary witnesses for the state, and it further appearing that said ....., prosecuting witness, and ..... and ....., witnesses, are unable to give bonds for their appearance at the trial.

Therefore, you, the said constable, are commanded, in the name of the people of the state of Washington, forthwith to convey and deliver the said ..... to the said keeper, and you, the said keeper, are hereby commanded to receive the said ..... into your custody in the said jail, and there safely keep until the trial of .....

Dated this .... day of ....., A. D. 19....

Justice of the Peace, Seattle Precinct, King County,  
State of Washington.

State of Washington,  
County of King,—ss.

I hereby certify, that I served the within commitment by delivering the within named ..... to the custody of the keeper of the jail of ..... this .... day of ....., 19.....

Constable, Seattle Precinct, King County, Washington.

No. .... In Justice's Court. Before John E. Carroll, Justice of the Peace, Seattle Precinct, King County, State of Washington. The State of Washington, Plaintiff, v. ...., Defendant. Commitment—Witness. ...., ...., Witnesses. Filed ..... 19.....  
....., Justice of the Peace, Seattle Precinct, King County, Wash.

The court may compel the witnesses to give sureties for their appearance in the superior court.

#### § 286. SURETIES REQUIRED OF WITNESSES, WHEN.

If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance unless other security be given, such magistrate may order the witness to enter into recognizance with such sureties as may be deemed necessary for his appearance at court. [1960.]

#### FORM.

In Justice's Court.

Before John E. Carroll, Justice of the Peace in and for  
Seattle Precinct, King County, State of Washing-  
ton.

No. ....

State of Washington, }  
Plaintiff, }  
v. }  
....., }  
Defendant. }

#### WITNESS' RECOGNIZANCE.

And now, on the .... day of ....., A. D. 19....., comes ..... as principal, and ..... and ..... as sureties, and acknowledge and recognize themselves,

their heirs, executors and administrators, jointly and severally bound unto the state of Washington, in the just and full sum of ..... dollars, lawful money of the United States. The condition of this recognizance is such that, whereas the said defendant has been held by John E. Carroll, a justice of the peace in and for Seattle precinct, county of King, state of Washington, to answer before the superior court of King County, state of Washington, at such time as ordered by the said superior court.

Now, therefore, if the said ..... shall appear and attend to testify as a witness, before said court, whenever ..... attendance shall be required by said court, until discharged according to law, then this recognizance shall be void, and otherwise remain in full force and effect.

In testimony whereof, the said parties have hereunto set their hands and seals the day and year first above written.

.....[Seal]  
 .....[Seal]  
 .....[Seal]

State of Washington,  
 County of King,—ss.

..... and ....., being duly sworn according to law, each for himself says that he is not a sheriff, clerk or other officer of the superior court; that he is worth the sum of ..... dollars (\$.....), over and above all just debts and liabilities, and exclusive of property exempt from execution.

.....  
 .....

Subscribed and sworn to before me this .... day of ....., A. D. 19.....

.....,  
 Justice of the Peace, Seattle Precinct, King County,  
 Washington.

No. .... In Justice's Court. Before John E. Carroll, Justice of the Peace, Seattle Precinct, King County, State of Washington. The State of Washington, Plaintiff, v. ...., Defendant. Witness' Recognizance. Witness: ..... The within recognizance and the sureties thereon hereby approved. Dated .....,

19....., Justice of the Peace. Filed this  
 .... day of ....., 19....., Justice of the  
 Peace.

In a case where the material witness is a married woman or a minor child, some other proper person may recognize for the appearance of such witness.

### **§ 287. RECOGNIZANCE FOR WITNESSES NOT SUI JURIS.**

When any married woman or a minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may, in his discretion, take the recognizance of such married woman or minor in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority. [1961.]

The defendant after trial may be, if convicted, confined at hard labor until he shall have satisfied the judgment for the fine and costs.

### **§ 288. JUDGMENT INCLUDES FINE AND COSTS.**

In all cases of conviction, unless otherwise provided in this chapter, the justice shall enter judgment for the fine and costs against the defendant, and may commit him to jail, to be placed at hard labor until the judgment is satisfied, or the payment thereof be secured, as provided by section fourteen hundred and ninety-seven and further proceedings therein shall be had as in like cases in the superior court; but the defendant shall not be imprisoned for a longer aggregate time than one day for every three dollars of the fine and costs; and a defendant who has been committed shall be discharged at any time upon payment of such part of the fine and costs as remain unpaid, after deducting from the whole amount any previous payment and three dollars for every day he has been imprisoned upon the commitment. [1933.]

## FORM.

### EXECUTION.

The State of Washington,  
County of .....,—ss.

To the Sheriff or Any Constable of Said County:

Whereas, at a justice's court held at my office in said county for the trial of C D for the offense hereinafter stated, the said C D was convicted of having on the .... day of ....., 19...., in said county, committed [here state the offense], and upon conviction the said court did adjudge and determine that the said C D should pay a fine of ..... dollars, and ..... dollars costs; and, whereas, the said fine and costs have not been paid, these are, therefore, in the name of the state of Washington, to command you to levy on the goods and chattels, etc. [as in execution in civil cases].

Execution of fine and costs may be stayed for thirty days by filing approved sureties.

#### § 289. BOND FOR STAY OF EXECUTION.

Every defendant may stay the execution for the fine and costs for thirty days, by procuring sufficient sureties, to be approved by the justice, to enter into recognizance before him for the payment of the fine and costs; the entry of such recognizance shall be made on the docket of the justice, and signed by the sureties, and shall have the same effect as a judgment, and if the same be not paid in thirty days, the justice shall proceed as in like cases in the superior court. [1934.]

#### § 290. RIGHT OF APPEAL TO SUPERIOR COURT.

As a defendant who considers himself aggrieved by the judgment of the superior court may cry to the supreme court, so the defendant, judged upon a crime, in a justice court, has the right of appeal to the superior court of the county. The time of appeal is limited to ten days; the manner of making the appeal may be by orally announcing it in court or by serving a written notice on the justice. Upon filing the inevitable security he may be released pending the hearing of the appeal in the appellate court. The wit-

nesses are likewise bound to appear in the superior court. It is proper that the appellant in a criminal action should not have to advance the fees, for if he had to advance such fees as are necessary, the poverty stricken defendant would be practically deprived of his right of appeal. The costs of the appeal, though, are not avoided, for if the judgment against him be confirmed by the appellate court, the costs of prosecution are also taxed against him.

Every person convicted before a justice of the peace of any offense may appeal from the judgment, within ten days thereafter, to the superior court. The appeal shall be taken by orally giving notice thereof at the time the judgment is rendered, or by serving a written notice thereof upon the justice at any time after the judgment, and within the time allowed for taking the appeal; when the notice is given orally, the justice shall enter the same in his docket. The appellant shall be committed to the jail of the county until he shall recognize or give bond to the state, in such reasonable sum, with such sureties as said justice may require, with condition to appear at the court appealed to, and there prosecute his appeal, and to abide the sentence of the court thereon, if not revised by a higher court. [1919.]

### FORM.

#### In Justice's Court.

Before John E. Carroll, Justice of the Peace, in and for  
Seattle Precinct, King County, State of Washing-  
ton.

No. ....

State of Washington,	}
Plaintiff,	
v.	
.....,	}
Defendants.	

### APPEAL BOND—CRIMINAL.

State of Washington,  
County of King,—ss.

Know All Men by These Presents:

That we, ....., as principal, and ....., as  
sureties, are held and firmly bound unto the state of

Washington in the penal sum of ..... dollars, for the payment of which sum, well and truly to be made, we bind ourselves and each of us, our heirs, executors and administrators, jointly and severally firmly by these presents.

Signed and sealed this .... day of ....., A. D. 19.....

The condition of the foregoing obligation is such that, whereas, on the .... day of ....., A. D. 19....., the above-bounden principal was convicted before John E. Carroll, a justice of the peace, in and for said county, of the offense of ....., and the said justice of the peace did adjudge and determine that the said ..... pay a fine of ..... dollars and ..... dollars costs of prosecution, and in default of payment thereof be committed to jail until said fine and costs shall be paid; and whereas the said ..... has given notice of appeal from said conviction and sentence, to the superior court of said county.

Now, therefore, if the said ..... shall appear at said court and there prosecute his appeal, and shall abide the sentence of the court thereon, unless revised by a higher court, and shall in the meantime be of good behavior, then this obligation shall become void; otherwise, it shall remain in full force and effect.

.....,  
Principal.  
....., [Seal]  
....., [Seal]  
....., [Seal]  
....., [Seal]  
Sureties.

State of Washington,  
County of King,—ss.

....., being first duly sworn, each for himself, on oath says: I am a resident of the state of Washington; I am not a counselor or attorney at law, sheriff, clerk of the superior court, or other officer of such court, and am worth the said ..... the sum of ..... dollars, the said ..... the sum of ..... dollars, the said ..... the sum of ..... dollars, the said ..... the sum of ..... dollars, over and above all debts and

liabilities, and exclusive of property exempt from execution.

.....  
 .....  
 .....  
 .....

Subscribed and sworn to before me this .... day of  
 ....., A. D. 19.....

Justice of the Peace, Seattle Precinct, King County, State  
 of Washington.

No. .... In Justice's Court. Before John E. Carroll, Justice of the Peace, Seattle Precinct, King County, State of Washington. The State of Washington, Plaintiff, v. ...., Defendant. Appeal Bond (Criminal Action). Filed and approved this .... day of ....., 19....., Justice of the Peace. ...., Attorney.. for Defendant.

#### § 291. RECOGNIZANCE FOR WITNESSES ON APPEAL.

Upon an appeal being taken in a criminal action the justice shall require the witnesses to give recognizances for their appearance in the superior court, or, if they are not present, indorse their names on the copy of proceedings. He shall on such appeal make and certify a copy of the conviction and other proceedings in the case, and transmit the same, together with the recognizance and an abstract bill of the costs, to the clerk of the court appealed to, who shall issue a subpoena for the witnesses if they are not under recognizance. [1921.]

#### § 292. DEFENDANT NOT TO ADVANCE FEES OF APPEAL.

The appellant in a criminal action shall not be required to advance any fees in claiming his appeal nor in prosecuting the same; but if convicted in the appellate court, or if sentenced for failing to prosecute his appeal, he may be required as a part of the sentence to pay the costs of prosecution. If the appellant shall fail to enter and prosecute his appeal he shall be defaulted of his recognizance, if any was taken, and the superior court may award sentence against him for the offense whereof he was convicted in like manner as if

he had been convicted thereof in that court; and if he be not then in custody process may be issued to bring him into court to receive sentence. [1920.]

### § 293. EXAMINATION UPON COMPLAINT.

It is the duty of the justice of the peace to examine one who complains that criminal injury has been done him, together with such witnesses as he may have. The complaint is reduced to writing and signed by complainant and a warrant is issued. This is the preliminary examination upon which an offender may be bound over to the superior court of the county. The prosecuting attorneys of the various counties of this state have always a number of such cases which they bring in the name of the state before the justices for preliminary examination, in the course of which the accused is either discharged or punished within the jurisdiction or bound over to the superior court. The hearing is in the form of a trial of the usual kind; the state appearing by the prosecuting attorney and the defendant, if he have a lawyer, being represented by him on the examination. Witnesses are questioned by both counsel; both address the court, and if the evidence warrants, the court commits the defendant to the superior court for trial.

Upon complaint being made to any justice of the peace, or judge of the superior court, in open court, or in vacation, that a criminal offense has been committed, he shall examine on oath the complainant, and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant, and if it shall appear that any offense has been committed of which the superior court has exclusive jurisdiction, the magistrate shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed forthwith to take the person accused and bring him before the person issuing the warrant, unless he shall be absent or unable to attend thereto, then before some other magistrate of the county, to be dealt with according to law, and in the same warrant may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination. [1949.]

**§ 294. TRIAL WHEN JUSTICE HAS JURISDICTION OF OFFENSE.**

If it shall appear that an offense has been committed of which a justice of the peace has jurisdiction, and one which would be sufficiently punished by a fine not exceeding one hundred dollars, if the magistrate having the complaint is a justice of the peace, he shall cause the complaint to be ordered and proceed as in like cases before a justice of the peace; or, if any other magistrate, he shall certify the papers, with a statement of the offense appearing to be proved, to the nearest justice of the peace, and shall, by order, require the defendant and the witnesses to enter into recognizances with sufficient sureties to be approved by the magistrate, for their appearance before such justice at the time and place stated in the order; and such justice shall proceed to the trial of the action as if originally commenced before him. [1955.]

**§ 295. BAIL WHEN JUSTICE HAS NOT JURISDICTION.**

If the offense is one that must be tried in a court of larger jurisdiction, the justice of the peace may release the defendant on security for his appearance in the superior court.

If it appear that a bailable offense has been committed, the magistrate shall order the defendant to enter into recognizance, with sufficient sureties, for his appearance in the superior court to answer the charge, and if he shall not do so, or the offense be not bailable, he shall commit him to jail. The justice of the peace who committed the person, or the judge of the superior court to which the party is held to answer, may admit to bail in the amount required and approve the sureties. The recognizance shall be conditioned in effect that the defendant will appear in the superior court to answer said charge whenever the same shall be prosecuted, and at all times, until discharged according to law, render himself amenable to the orders and process of the superior court, and, if convicted, render himself in execution of the judgment. [1957.]

**FORM.**

**In Justice's Court.**

**Before John E. Carroll, Justice of the Peace, in and for  
Seattle Precinct, King County, State of Washing-  
ton.**

**No. ....**

The State of Washington,	}
Plaintiff,	
v.	
.....,	
Defendant.	

**COMMITMENT—WHERE NO JURISDICTION TO  
TRY.**

State of Washington,  
County of King,—ss.

The State of Washington to the Sheriff of King County,  
or to Any Constable of Said King County, and the  
Keeper of the County Jail of Said King County,  
Greeting:

Whereas, ....., defendant.. ha.. been brought  
this day before the undersigned, one of the justices of  
the peace in and for said county, charged on the oath  
of ..... with having on the .... day of .....,  
A. D. 19...., in said King County committed the of-  
fense of ....., and whereas upon the preliminary  
examination of said defendant.. on said charge it ap-  
pearing to the said justice that the offense of .....  
has been committed and that there is probable cause to  
believe that the said ....., defendant.., ha.. com-  
mitted said offense at the time and place aforesaid; and  
whereas, the said ....., defendant.., are held for  
trial to the superior court of King County, state of  
Washington, in bonds fixed at the sum of ..... dol-  
lars, ha.. failed to give said bail for ..... appearance  
to answer in the superior court of said county, as re-  
quired by me;

Therefore, in the name of the state of Washington,  
you are commanded to receive the said ....., de-  
fendant.., into your custody in the said jail, and .....

there safely keep until ..he.. be discharged by due course of law.

Given under my hand this .... day of ....., A. D. 19.....

Justice of the Peace, Seattle Precinct, King County, Washington.

State of Washington,  
County of King,—ss.

I hereby certify that I served the within commitment by delivering the within named ..... to the custody of the keeper of the jail of King County, Washington, this .... day of ....., A. D. 19.....

Sheriff, King County, Washington.

Deputy.

#### Fees:

Service .....	\$.....
Custody .....	\$.....
Mileage .....	\$.....
Returns .....	\$.....

No. .... In Justice's Court. Before John E. Carroll, Justice of the Peace, Seattle Precinct, King County, State of Washington. State of Washington, Plaintiff, v. ...., Defendant. Commitment Where No Jurisdiction to Try. Filed ..... A. D. 19....., Justice of the Peace.

### § 296. RECOGNIZANCE OF WITNESSES.

The witness may be required to recognize for his appearance in the superior court to testify in the cause, and failing to so recognize may be held in the county jail until the trial. This may seem a harsh rule, but it is well founded in the policy of public protection. So many things may happen to an unsecured witness. Criminal cases are so often long delayed in coming to trial; witnesses of crimes and offenses are often very queer company themselves—persons, we may say, who get into some peculiar places and positions—that this measure of securing their appearance must be had. Under certain circumstances, as shown in the stat-

ute, the depositions of such witnesses may be taken, and taken, save for the cross-examination, in the narrative form.

All witnesses required to recognize with or without sureties shall, if they refuse, be committed to the county jail by the magistrate, there to remain until they comply with such orders or be otherwise discharged according to law: Provided, that when the magistrate is satisfied that any witness required to recognize with sureties is unable to comply with such order, he shall immediately take the deposition of such witness and discharge him from custody upon his own recognizance. The testimony of the witness shall be reduced to writing by a justice or some competent person under his direction, and he shall take only the exact words of the witness; the deposition, except the cross-examination shall be in the narrative form, and upon the cross-examination the questions and answers shall be taken in full. The defendant must be present in person when the deposition is taken, and shall have an opportunity to cross-examine the witnesses; he may make any objections to the admission of any part of the testimony, and all objections shall be noted by the justice; but the justice shall not decide as to the admissibility of the evidence, but shall take all the testimony offered by the witness. The deposition must be carefully read to the witness, and any corrections he may desire to make thereto shall be made in presence of the defendant by adding the same to the deposition as first taken; it must be signed by the witness, certified by the justice, and transmitted to the clerk of the superior court, in the same manner as depositions in civil actions. And if the witness is not present when required to testify in the case, either before the grand jury or upon the trial in the superior court, the deposition shall be submitted to such judge of the superior court, upon the objections noted by the justice, and such judge shall suppress so much of said deposition as he shall find to be inadmissible, and the remainder of the deposition may be read as evidence in the case, either before the grand jury or upon the trial in the court. [1962.]

When necessary the deposition is reduced to writing and signed by the witness.

§ 297. DEPOSITION TO BE WRITTEN AND SIGNED.

The testimony of the witness examined shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses. [1953.]

§ 298. RECORD TO BE TRANSCRIBED TO SUPERIOR COURT.

It shall be the duty of all magistrates within this state, before whom any person or persons shall be committed or held to bail to answer to any crime, to return their proceedings, duly certified, including a copy of all recognizances taken by them, to the clerk of the superior court within ten days after the final hearing and commitment or holding to bail, as aforesaid, and any justice of the peace who shall fail or neglect to make such return shall not be entitled to receive any fees or costs in such case. [1963.]

FORM.

No. ....

In Justice's Court.

Before John E. Carroll, Justice of the Peace, in and for  
Seattle Precinct, King County, State of Washing-  
ton.

State of Washington,  
County of King,—ss.

....., 19....

	Cost Book	Taxable		Amt.	Date Paid		
	J. P.	Costs		Paid			
State of Washington,	.....	.....	.....	.....	.....	.....	.....
Plaintiff,	.....	.....	.....	.....	.....	.....	.....
v.	.....	.....	.....	.....	.....	.....	.....
Witness Fees	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
Constable Fees	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
Defendant.	.....	.....	.....	.....	.....	.....	.....
Attorney's Fees	.....	.....	.....	.....	.....	.....	.....

Complaint filed in writing.....	19....
Sworn to by.....	
Charging .....	
with the crime of.....	
.....19.., in King County, Washington.....	
Warrant issued, served by.....	
who arrested the defendant.. and brought .....	
into court.....	19....
Bonds \$.....Set for... ..	19....M.

## § 299. SUIT AGAINST WITNESS ON THE BOND.

When any person under recognizance in any criminal prosecution, either to appear and answer before a justice, or to testify in any court, shall fail to perform the condition of any recognizance, his default shall be recorded; and it shall be the duty of the prosecuting attorney to proceed at once, by action against the person bound by recognizance, or such of them as he may elect. [1965.]

## § 300. COSTS TO BE FORWARDED.

The costs accrued in the lower court must also be certified to the superior court.

In all cases where any magistrate shall order a defendant to recognize for his appearance before a justice of the peace, or the superior court, he shall forward with the papers in the case an abstract of the costs that have accrued in the case, and such costs shall be subject to the final determination of the case. [1966.]

## § 301. COMPLAINANT PAYS COSTS FOR MALICIOUS COMPLAINT.

The party making a complaint which turns out upon the hearing to have been made maliciously or frivolously is taxed with the costs and may be committed to jail in default of payment thereof.

If it should appear upon the whole examination that no offense has been committed, or that there is not probable cause for charging the defendant with an offense, he shall be discharged, and if in the opinion of the magistrate the complaint was malicious or without probable cause, and there was no reasonable ground

therefor, the costs shall be taxed against the party making the complaint. [1954.]

### § 302. COMPOUND OF MISDEMEANORS.

When any person shall be committed to prison, or shall be under examination or recognizance to answer any charge for a misdemeanor for which the party injured may have a remedy by civil action, except where the offense was committed upon a sheriff or other officer, justice, or violently, or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment or took the recognizance, or is conducting the examination, and acknowledge in writing that he has received satisfaction for the injury, the magistrate may, in his discretion, on payment of all costs which may have accrued, discharge the recognizance, or supersede the commitment by an order under his hand, and may also discharge all recognizance and supersede the commitment of all witnesses in the case. [1964.]

### FORMS.

#### In Justice's Court.

Before John E. Carroll, Justice of the Peace, in and for Seattle Precinct, King County, State of Washington.

No. ....

State of Washington,	}
Plaintiff,	
v.	
.....,	}
Defendant.	

### AFFIDAVIT FOR SEARCH-WARRANT.

State of Washington,  
County of King,—ss.

....., being first duly sworn, on oath deposes and says, that the following goods and chattels, to wit: ....., the property of the said ....., have been within ..... days past, or were on the .... day of ....., 19...., by some person or persons unknown, stolen, taken and carried away out of the possession of the said ..... in the county aforesaid; and also that

the said ..... verily believes that the said goods or  
a part thereof are concealed in or about the house of  
....., in said county .....

Subscribed and sworn to before me this .... day of  
....., A. D. 19.....

Justice of the Peace, in and for Seattle Precinct,  
King County, Washington.

### SEARCH-WARRANT.

The State of Washington,  
..... County,—ss.

To the Sheriff or Any Constable of Said County.

Whereas, A B has this day made complaint on oath to  
the undersigned, one of the justices of the peace in and  
for said county, that the following goods and chattels,  
to wit [here describe them], the property of the said  
A B, have been within ..... days past, or were on the  
.... day of ....., by some person or persons un-  
known, stolen, taken, and carried away out of the pos-  
session of the said A B in the county aforesaid; and,  
also, that the said A B verily believes that the said  
goods or a part thereof are concealed in or about the  
house of C D, in said county [here describe the premises  
to be searched]; therefore, in the name of the state of  
Washington, you are commanded that, with the neces-  
sary and proper assistance, you enter into the said house  
[describe the premises to be searched] and then dili-  
gently search for the said goods and chattels; and if the  
same or any part thereof be found on such search, bring  
the same, and also the same C D, forthwith before me,  
to be disposed of according to law.

Given under my hand this .... day of .....,  
19.....

J P,  
Justice of the Peace.

## CHAPTER XVIII.

## CRIMES.

- § 303. Accessory to a crime.
- § 304. Acquittal, foreign.
- § 305. Acquittal or conviction in other county.
- § 306. Adultery.
- § 307. Amusement, dangerous.
- § 308. Animals—Vicious animals at large.
- § 309. Animals—Diseased.
- § 310. Animals—Disposal of carcasses.
- § 311. Animals, injury to.
- § 312. Arson.
- § 313. Automobiles—Speed of.
- § 314. Beggar is vagrant.
- § 315. Brands on animals, etc.
- § 316. Brand, imitating lawful.
- § 317. Burglary.
- § 318. Child, abandonment of.
- § 319. Concert halls, minors in.
- § 320. Children, employment of.
- § 321. Conveyance—Offenses in public.
- § 322. Defendant.
- § 323. Deseccration of flag.
- § 324. Felony.
- § 325. Felony—Punishment, when not fixed by statute.
- § 326. Firearms.
- § 327. Forgery.
- § 328. Gambling.
- § 329. Highways.
- § 330. Intoxicating liquors.
- § 331. Manslaughter.
- § 332. Misdemeanor defined.
- § 333. Murder.
- § 334. Murder in the second degree.
- § 335. Orchard, injury to.
- § 336. Public peace, crimes against.
- § 337. Sabbath-breaking.
- § 338. Religious meeting, disturbing.
- § 339. Vagrancy.

**§ 303. ACCESSORY TO A CRIME.**

Every person not standing in the relation of husband or wife, brother or sister, parent or grandparent, child

or grandchild, to the offender, who after the commission of a felony shall harbor, conceal or aid such offender with intent that he may avoid or escape from arrest, trial, conviction or punishment, having knowledge that such offender has committed a felony and is liable to arrest, is an accessory to the felony. [2008.]

**§ 304. ACQUITTAL, FOREIGN.**

Whenever, upon the trial of any person for a crime it appears that the offense was committed in another state or country, under such circumstances that the courts of this state had jurisdiction thereof, and that the defendant has already been acquitted or convicted upon the merits, upon a criminal prosecution under the laws of such state or country, founded upon the act or omission with respect to which he is upon trial, such former acquittal or conviction is a sufficient defense.

**§ 305. ACQUITTAL OR CONVICTION IN OTHER COUNTY.**

Whenever, upon the trial of any person for a crime, it shall appear that the defendant has already been acquitted or convicted upon the merits, of the same crime, in a court having jurisdiction of such offense in another county of this state, such former acquittal or conviction is a sufficient defense.

**§ 306. ADULTERY.**

Whenever any married woman shall have sexual intercourse with a man other than her husband, whether married or not, both shall be guilty of adultery and punished by imprisonment in the state penitentiary for not more than two years or by a fine of not more than one thousand dollars; provided, that no prosecution for violation of this section shall be commenced except on complaint of the husband or wife, nor after one year from the commission of the offense. [2457.]

**§ 307. AMUSEMENT, DANGEROUS.**

Every proprietor, lessee or occupant of any place of amusement, or any plat of ground or building, who shall allow it to be used for the exhibition of skill in throwing any sharp instrument or in shooting any bow-gun, pistol or firearm of any description, at or toward any human being, shall be guilty of a misdemeanor. [2535.]

**§ 308. ANIMALS—VICIOUS ANIMALS AT LARGE.**

Every person having the care or custody of any animal known to possess any vicious or dangerous tendencies, who shall allow the same to escape or run at large in any place or manner liable to endanger the safety of any person, shall be guilty of a misdemeanor; and any person may lawfully kill such animal when reasonably necessary to protect his own or the public safety. [2538.]

**§ 309. ANIMALS—DISEASED.**

Every owner or person having charge thereof, who shall import or drive into this state, or who shall turn out or suffer to run at large upon any highway or unclosed lands, or upon any lands adjoining the inclosed lands kept by any person for pasture; or who shall keep or allow to be kept in any barn with other animals, or water or allow to be watered at any public drinking fountain or watering place, any animal having any contagious or infectious disease, or who shall sell, let or dispose of any such animal knowing it to be so diseased, without first apprising the purchaser or person taking it of the existence of such disease, shall be guilty of a misdemeanor. [2540.]

**§ 310. ANIMALS—DISPOSAL OF CARCASSES.**

Every person owning or having in charge any animal that has died or been killed on account of disease, shall immediately bury the carcass thereof at least three feet underground, or cause the same to be consumed by fire. No person shall sell or offer to sell or give away the carcass of any animal which died or was killed on account of disease, or convey the same along any public road or land not his own. Every violation of any provision of this section shall be a misdemeanor. [2541.]

**§ 311. ANIMALS, INJURY TO.**

Every person who shall willfully kill, maim or disfigure any animal belonging to another, or expose any poisons or noxious substance with intent that it shall be taken by such animal—shall be guilty of a misdemeanor. [2659.]

**§ 312. ARSON.****First Degree:**

Every person who shall willfully—

1. Burn or set on fire in the night-time the dwelling-house of another, or any building in which there shall be at the time a human being; or

2. Set any fire manifestly dangerous to any human life, shall be guilty of arson in the first degree and be punished by imprisonment in the state penitentiary for not less than five years.

**Second Degree:**

Every person who, under circumstances not amounting to arson in the first degree, who shall willfully burn or set on fire any building, or any structure or erection appurtenant to or adjoining any building, or any structure or erection appurtenant to or adjoining any building, or any wharf, dock, threshing machine, threshing engine, bridge or trestle, or any hay, grain, crop or timber, whether cut or standing, or any lumber, shingle or other timber products, shall be guilty of arson in the second degree, and shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars.

**Contiguous Fires:**

Whenever any building or structure which may be the subject of arson in either the first or second degree shall be so situated as to be manifestly endangered by any fire and shall subsequently be set on fire thereby, any person participating in setting such fire shall be deemed to have participated in setting such building or structure on fire.

**“Set on Fire” Defined:**

A building, structure or any property mentioned in section 312 (above) hereof shall be deemed “set on fire” whenever any part thereof or anything therein shall be scorched, charred or burned.

**Ownership of Building:**

To constitute arson it shall not be necessary that another person than the defendant should have had ownership in the building or structures set on fire.

**Preparation is Attempt:**

Any willful preparation made by any person with a view to setting fire to any building or structure shall be deemed to be an attempt to commit the crime of arson, and shall be punished as such. [2572.]

**§ 313. AUTOMOBILES—SPEED OF.**

Every person who shall drive or operate, and every owner, lessee or other person in charge thereof who shall permit to be driven or operated, any automobile or motor vehicle on any public road, highway, park or parkway, street or avenue, within this state—

1. Within a thickly settled or business portion of any city or town, at a rate of speed faster than one mile in five minutes; or

2. Over any crossing, cross-walk, or street intersection within the limits of any city or town, when any person is upon the same, at a rate of speed faster than one mile in fifteen minutes; or

3. At any other place, at a rate of speed faster than one mile in two and one-half minutes; or

4. Upon any public road, highway, park or parkway, street or avenue, at any unsafe or unreasonable rate of speed, having proper regard to the safety of any other person or persons using the same, shall be guilty of a misdemeanor. [2531.]

**§ 314. BEGGAR IS VAGRANT.**

Every person—healthy person—who solicits alms is a vagrant, and shall be punished by imprisonment in the county jail for not more than six months, or by a fine of not more than five hundred dollars. [2688.]

**§ 315. BRANDS ON ANIMALS, ETC.**

Every person who shall willfully deface, obliterate, remove or alter any mark or brand placed by or with the authority of the owner thereof on any shingle bolt, log or stick of timber, or on any horse, mare, gelding, mule, cow, steer, bull, sheep, goat or hog, shall be punished by imprisonment in the state penitentiary for not more than five years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. [2594.]

**§ 316. BRAND, IMITATING LAWFUL.**

Every person who, in any county, shall place upon any property any brand or mark in the likeness or similitude of another brand or mark filed with the county auditor of such county by the owner thereof as a brand or mark for the designation or identification of a like kind of property, shall—

1. If done with intent to confuse or commingle such property with, or appropriate to his own use, the property of such other owner, be guilty of a felony, and be punished by imprisonment in the state penitentiary for not more than five years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment; or

2. If done without such intent, shall be guilty of a misdemeanor. [2595.]

**§ 317. BURGLARY.****First Degree:**

Every person who, with intent to commit some crime therein, shall enter in the night-time, the dwelling-house of another in which there shall be at the time a human being—

1. Being armed with a dangerous weapon; or
2. Arming himself therein with such a weapon; or
3. Being assisted by a confederate actually present; or
4. Who, while engaged in the night-time in effecting such entrance, or in committing any crime in such building or in escaping therefrom, shall assault any person; or
5. Who, with intent to commit some crime therein, shall break and enter any bank, postoffice, railway express or railway mail car, shall be guilty of burglary in the first degree and shall be punished by imprisonment in the state penitentiary for not less than five years.

**Second Degree:**

Every person who, with intent to commit some crime therein shall, under circumstances not amounting to burglary in the first degree, enter the dwelling-house of another or break and enter, or, having committed a crime therein, shall break out of, any building or part thereof, or a room or other structure wherein any property is kept for use, sale or deposit, shall be guilty of

burglary in the second degree and shall be punished by imprisonment in the state penitentiary for not more than fifteen years.

#### Presumption of Intent:

Every person who shall unlawfully break and enter or unlawfully enter any building or structure enumerated in this section of this act shall be deemed to have broken and entered or entered the same with intent to commit a crime therein, unless such unlawful breaking and entering or unlawful entry shall be explained by testimony satisfactory to the jury to have been made without criminal intent.

#### Crime in Building:

Every person who, in the commission of a burglary shall commit any other crime, shall be punished therefor as well as for the burglary, and may be prosecuted for each crime separately. [2578.]

#### Burglar Tools:

Every person who shall make or mend or cause to be made or mended, or have in his possession in the day or night-time, any engine, machine, tool, false key, pick, lock, bit, nippers or implement adapted, designed or commonly used for the commission of burglary, larceny or other crime, under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a crime, or knowing that the same is intended to be so used, shall be guilty of a gross misdemeanor. The possession thereof except by a mechanic, artificer or tradesman at and in his established shop or place of business, open to public view, shall be prima facie evidence that such possession was had with intent to use or employ or allow the same to be used or employed in the commission of a crime. [2582.]

### § 318. CHILD, ABANDONMENT OF.

Every person who shall willfully and without lawful excuse desert, or willfully neglect or refuse to provide for the support and maintenance of his wife, or child under the age of sixteen years, either said wife or child being in necessitous circumstances, shall be punished by imprisonment in the state penitentiary for not more than three years, or in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. (Proviso.) [2444.]

**§ 319. CONCERT HALLS, MINORS IN.**

Every person who—

1. Shall admit to or allow to remain in any dance-house, public pool or billiard hall, concert saloon, or in any place except a restaurant or dining-room, where intoxicating liquors are sold or given away, or in any place of entertainment injurious to the health or morals, owned, kept or managed by him, in whole or in part, any person under the age of twenty-one years; or,

2. Shall suffer or permit any such person to play any game of skill or chance, in any such place or in any place adjacent thereto, or to be or remain therein, or admit or allow to remain in any reputed house of prostitution or assignation, or in any place where opium, or any preparation thereof, is smoked, or where any narcotic drug is used, any person under the age of twenty-one years; or

3. Shall sell, or give, or permit to be sold, or given to any person under the age of twenty-one years any intoxicating liquor, cigar, cigarette, cigarette paper or wrapper, or tobacco in any form; or

4. Shall sell, or give, or permit to be sold or given to any person under the age of eighteen years, any revolver, pistol or toy pistol;

Shall be guilty of a gross misdemeanor.

It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another. [2445.]

**§ 320. CHILDREN, EMPLOYMENT OF.**

Every person who shall employ, and every parent, guardian or other person having the care, custody or control of such child, who shall permit to be employed, by another, any male child under the age of fourteen years or any female child under the age of sixteen years at any labor whatever, in or in connection with any store, shop, factory, mine or any inside employment not connected with farm or house work, without the written permit thereto of a judge of a superior court of the county wherein such child may live, shall be guilty of a misdemeanor. [2447.]

**§ 321. CONVEYANCE—OFFENSES IN PUBLIC.**

Every person who shall willfully use profane, offensive, or indecent language or engage in any quarrel

in any public conveyance, or interfere with or annoy any passenger therein, or, having refused to pay the proper fare, shall fail to leave any such conveyance upon demand, or, with intent to avoid the payment of fare shall ride upon any car or engine not commonly used for the carriage of passengers, shall be guilty of a misdemeanor. [2561.]

## § 322. DEFENDANT.

### Right to Counsel:

Whenever a defendant shall be arraigned upon the charge that he has committed any felony, and shall request the court to appoint counsel to assist in his defense, and shall by his own oath or such other proof as may be required satisfy the court that he is unable, by reason of poverty, to procure counsel, the court shall appoint counsel, not exceeding two, for such defendant, to be paid upon its order by the county in which such proceeding is had, compensation not exceeding ten dollars per day for each counsel, for the number of days such counsel is actually employed in court upon the trial. [2305.]

### Witnesses:

Every person accused of a crime shall have the right to meet the witnesses produced against him face to face; provided, that whenever any witness whose deposition shall have been taken pursuant to law by a magistrate, in the presence of the defendant and his counsel, shall be absent and cannot be found when required to testify, upon any trial or hearing, so much of such deposition as the court shall deem advisable and competent shall be admitted and read as evidence in such case. [2306.]

### Presumption of Innocence:

Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against him, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest. [2308]

### Conviction, When Had:

No person informed against or indicted for a crime shall be convicted thereof, unless by admitting the truth

of the charge in his plea, by confession in open court, or by the verdict of a jury, accepted and recorded by the court. [2309.]

**Bail, When Allowable:**

Every person charged with an offense, except that of murder in the first degree where the proof is evident or the presumption great, may be bailed by sufficient sureties, and bail shall justify and have the same rights as in civil cases, except as otherwise provided by law. The amount of bail in each case shall be determined by the court in its discretion and may from time to time be increased or decreased as circumstances may justify. [2310.]

**§ 323. DESECRATION OF FLAG.**

Every person who, for exhibition or display, shall cause to be placed upon or affixed to any flag, standard, color or ensign of the United States, or upon a flag, standard, color or ensign purporting to be such, any inscription, design, device, symbol, name, advertisement, words, characters, picture, mark or notice whatever, or who shall display or exhibit any such flag, standard, color or ensign to which any such inscription, design, device, symbol, name, advertisement, words, characters, photograph, mark or notice whatever; or who shall publicly mutilate, trample upon, deface, jeer at or defy any such flag, standard, color or ensign, shall be guilty of a misdemeanor. [2675.]

**§ 324. FELONY.**

Every crime which may be punished by death or by imprisonment in the state penitentiary is a felony. [2253.]

**§ 325. FELONY—PUNISHMENT WHEN NOT FIXED BY STATUTE.**

Every person convicted of a felony for which no punishment is specially prescribed by any statutory provision in force at the time of the conviction and sentence, shall be punished by imprisonment in the state penitentiary for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [2265.]

**§ 326. FIREARMS.****Aiming or Discharging Firearms:**

Every person who shall aim any gun, pistol, revolver or other firearm, whether loaded or not, at or toward any human being, or who shall willfully discharge any firearm, air-gun or other weapon, or throw any deadly missile in a public place, or in any place where any person might be endangered thereby, although no injury result, shall be guilty of a misdemeanor.

**Minor With Firearms:**

No minor under the age of fourteen years shall handle or have in his possession or under his control, except while accompanied by or under the immediate charge of his parent or guardian, any firearm of any kind for hunting or target practice or for other purposes. Every person violating any of the foregoing provisions, or aiding or knowingly permitting any such minor to violate the same, shall be guilty of a misdemeanor. [2559.]

**§ 327. FORGERY.****First Degree:**

Every person who, with intent to defraud, shall forge any writing or instrument by which any claim, privilege, right, obligation or authority, or any right or title to property, real or personal is or purports to be, or upon the happening of some future event may be, evidenced, created, acknowledged, transferred, increased, diminished, encumbered, defeated, discharged, or affected, or any request for the payment of money or delivery of property or any assurance of money or property, or any writing or instrument for the identification of any person, or any public record or paper on file in any public office, or any certified or authenticated copy of such record or paper, or any entry in any public or private record of account, or any judgment, decree, order, mandate, return, writ or process of any court, tribunal, judge, justice of the peace, commissioner or magistrate, or the official return or report of, or a license issued by, any public officer, or any pleading, demurrer, motion, affidavit, appearance, notice, cost bill, statement of facts, bill of exceptions or proposed statement of facts or bill of exceptions in any action or proceeding whether pending or not, or the draft of any bill or resolution that has been presented to either house of the

legislature of this state, whether engrossed or not, or the great seal of this state, the seal of any public officer, court, notary public or corporation, or any public seal authorized or recognized by the laws of this or any other state or government, or any impression of any such seal; or shall forge or counterfeit any coin or money of any state or government, or any bank or treasury bill, any note or postage or revenue stamp; or who, without authority shall make or engrave any plate in the form or similitude of any writing, instrument, seal, coin, money, stamp or thing which may be the subject of forgery, shall be guilty of forgery in the first degree, and shall be punished by imprisonment in the state penitentiary for not more than twenty years. [2583.]

#### Second Degree:

Every person who, with intent to injure or defraud shall—

1. Make any false entry in any public or private record or account; or

2. Fail to make a true entry of any material matter in any public or private record or account; or

3. Forge any letter or written communication or copy or purported copy thereof, or send or deliver, or connive at the sending or delivery of any false or fictitious telegraph message or copy or purported copy thereof, whereby or wherein the sentiments, opinions, conduct, character, purpose, property, interests or rights of any person shall be misrepresented or may be injuriously affected, or, knowing any such letter, communication or message or any copy or purported copy thereof to be false, shall utter or publish the same or any copy or purported copy thereof as true, shall be guilty of forgery in the second degree, and shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than five thousand dollars. [2585.]

### § 328. GAMBLING.

#### Conducting Gambling:

Every person who shall open, conduct, carry on or operate, whether as owner, manager, agent, dealer, clerk or employee, and whether for hire or not, any gambling game or game of chance, played with cards,

dice, or any other device, or any scheme or device whereby any money or property or any representative of either, may be bet, wagered or hazarded upon any chance, or any uncertain or contingent event, shall be a common gambler, and shall be punished by imprisonment in the state penitentiary for not more than five years. [2469.]

#### Gambling:

Every person who shall bet, wager or hazard any money or property, or any representative of either, upon any game, scheme, or device, opened, conducted, carried on or operated in violation of the last section shall be guilty of a misdemeanor. [2470.]

#### Swindling:

Every person who, by color, or aid of any trick or sleight-of-hand performance, or by any fraud or fraudulent scheme, cards, dice, or device, shall win for himself or for another any money or property, or representative of either, shall be punished by imprisonment in the state penitentiary for not more than ten years. [2471.]

#### Possession of Gambling Devices:

Every person who shall have in his possession or shall permit to be placed or kept in any building or boat, or part thereof, owned, leased or occupied by him, any table, slot machine, or any other article, device or apparatus of a kind commonly used for gambling, or operated for the losing or winning of any money or property, or any representative of either, upon any chance or uncertain or contingent event, shall be guilty of a gross misdemeanor. [2472.]

### § 329. HIGHWAYS.

#### Disturbance:

Every person who shall ride or drive any horse upon a public highway, in a manner likely to endanger the safety or life of another, or on such highway shall create or participate in any noise, disturbance or other demonstration calculated or intended to frighten, intimidate or disturb any person, shall be guilty of a misdemeanor. [2534.]

#### Throwing Glass, etc., on Highways:

That any person or persons, corporation or corporations who shall throw, place or deposit, in any road,

street, alley or highway, in the state of Washington, any bottle, bottles, glass, glassware, tacks, or nails, shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not less than \$25 nor more than \$50, together with the costs and disbursements of the prosecution, and shall be committed to the county jail until such fine and costs are paid. [2720.]

### § 330. INTOXICATING LIQUORS.

#### In Public Conveyance:

Every person who shall drink any intoxicating liquor in any public conveyance, except in a compartment or place where sold or served under the authority of a license lawfully issued, shall be guilty of a misdemeanor. [2693.]

Every person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink any intoxicating liquor in any public conveyance, except in the compartment where such liquor is sold or served under the authority of a license lawfully issued, shall be guilty of a misdemeanor. [2694.]

#### Misrepresenting Age of Liquors:

Every person who, as principal, agent or otherwise, shall sell or offer for sale any spirituous or distilled intoxicating liquor known as whisky (except Scotch or Irish whisky) any part of which has not been aged for a period of four years in wooden barrels or casks, or who shall, as principal, agent or otherwise, sell or offer for sale any malt liquor that has not been aged for a period of more than sixty (60) days, or which contains more than eight (8) per cent alcohol by weight, shall be guilty of a gross misdemeanor. [2695.]

#### Low Wines, etc.:

Every person who, by mixing, compounding or distilling low wines or ardent spirits, or who, by adding thereto any flavoring or other substance, shall produce, or who shall sell or offer for sale or have in his possession with intent to sell, any liquor known as whisky, gin or brandy so produced, shall be guilty of a gross misdemeanor. [2696.]

**§ 331. MANSLAUGHTER.**

In any case other than those specified in sections 140, 141 and 142 of this act, homicide, not being excusable or justifiable, is manslaughter. [See Murder.]

Manslaughter is punishable by imprisonment in the state penitentiary for not more than twenty years, or by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. [2395.]

**§ 332. MISDEMEANOR DEFINED.**

Every crime punishable by a fine of not more than two hundred and fifty dollars, or by imprisonment in a county jail for not more than ninety days, is a misdemeanor. Every other crime is a gross misdemeanor. [2253.]

**§ 333. MURDER.****Proof of Death:**

No person shall be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of killing by the defendant, as alleged, are each established as independent facts beyond a reasonable doubt. [2391.]

**Murder in the First Degree:**

The killing of a human being, unless it is excusable or justifiable, is murder in the first degree when committed either—

1. With a premeditated design to effect the death of the person killed, or of another; or

2. By an act imminently dangerous to others and evincing a depraved mind, regardless of a human life, without a premeditated design to effect the death of any individual; or

3. Without a design to effect death, by a person engaged in the commission of, or in an attempt to commit, or in withdrawing from the scene of, a robbery, rape, burglary, larceny or arson in the first degree; or

4. By malicious interfering or tampering with or obstructing any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure or appliance pertaining to or connected with any railway, or any engine, motor or car of such railway.

Murder in the first degree shall be punished by death or by imprisonment in the state penitentiary for life, in the discretion of the court. [2391.]

### § 334. MURDER IN THE SECOND DEGREE.

The killing of a human being, unless it is excusable or justifiable, is murder in the second degree when—

1. Committed with a design to effect the death of the person killed or of another, but without premeditation; or

2. When perpetrated by a person engaged in the commission of, or in an attempt to commit, or in withdrawing from the scene of, a felony other than those enumerated in section 140 (above) of this act.

Murder in the second degree shall be punished by imprisonment in the state penitentiary for not less than ten years. [2393.]

#### Killing in Duel:

Every person who shall fight or participate in, as second or assistant, any duel within this state, in which any person is killed, or who, by previous appointment made within this state, shall fight or participate in, as second or assistant, any duel out of the state, in which any person is killed, shall be guilty of murder in the second degree; and, in the latter case, may be proceeded against in any county in this state. [2394.]

### § 335. ORCHARD, INJURY TO.

Every person who shall willfully—

Enter without the consent of the owner or occupant, any orchard, garden or vineyard, with intent to take, injure or destroy anything there grown or growing;—shall be guilty of a misdemeanor. [2659.]

### § 336. PUBLIC PEACE, CRIMES AGAINST.

#### Disturbing Meeting:

Every person who, without [authority] of law, shall willfully disturb any assembly or meeting not unlawful in its character, shall be guilty of a misdemeanor. [2547.]

#### Riot Defined:

Whenever three or more persons, having assembled for any purpose, shall disturb the public peace by using

force or violence to any other person, or to property, or shall threaten or attempt to commit such disturbance, or to do any unlawful act by the use of force or violence, accompanied with the power of immediate execution of such threat or attempt, they shall be guilty of a riot. [2548.]

#### Unlawful Assembly:

Whenever three or more persons shall assemble with intent—

1. To commit any unlawful act by force; or
2. To carry out any purpose in such manner as to disturb the public peace; or,
3. Being assembled, shall attempt or threaten any act tending toward a breach of the peace, or an injury to persons or property, or any unlawful act—such an assembly is unlawful, and every person participating therein by his presence, aid or instigation, shall be guilty of a gross misdemeanor. [2550.]

#### Remaining After Warning:

Every person who shall remain present at the place of an unlawful meeting after having been warned to disperse by a magistrate or public officer, unless as a public officer or at the request of such officer he is assisting in dispersing the same, or in protecting persons or property or in arresting offenders, shall be guilty of a misdemeanor. [2551.]

### § 337. SABBATH-BREAKING.

#### Defined:

Every person who, on the first day of the week, shall promote any noisy or boisterous sport or amusement, disturbing the peace of the day; or who shall conduct or carry on, or perform or employ any labor about any trade or manufacture, except livery-stables, garages and works of necessity or charity conducted in an orderly manner so as not to interfere with the repose and religious liberty of the community; or who shall open any drinking saloon, or sell, offer or expose for sale, any personal property, shall be guilty of a misdemeanor: Provided, that meals, without intoxicating liquors, may be served on the premises or elsewhere by caterers, and prepared tobacco, milk, fruit, confectionery, newspapers, magazines, medical and surgical appliances may

be sold in a quiet and orderly manner. In works of necessity or charity is included whatever is needful during the day for the good order or health or comfort of a community; but keeping open a barber-shop, shaving or cutting hair shall not be deemed a work of necessity or charity, and nothing in this section shall be construed to permit the sale of uncooked meats, groceries, clothing, boots or shoes.

#### Observing Another Day:

It shall be a sufficient defense to a prosecution for performing work or labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time, and that the act complained of was done in such manner as [will] not disturb others in the observance of the Sabbath. [2494.]

#### Service of Legal Process:

Every person who shall serve any legal process on the Sabbath day, except in case of a breach, or apprehended breach, of the peace, or when sued out for the apprehension of a person charged with a crime, or where such service is expressly authorized by statute, shall be guilty of a misdemeanor. [2497.]

### § 338. RELIGIOUS MEETING, DISTURBING.

Every person who shall willfully disturb, interrupt, or disquiet any assemblage of people met for religious worship—

1. By noisy, rude, or indecent behavior, profane discourse, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting; or,

2. By exhibiting shows or plays, or promoting any racing of animals, or gaming of any description, or engaging in any boisterous or noisy amusement; or,

3. By disturbing in any manner, without authority of law within one mile thereof, free passage along a highway to the place of such meeting, or by maliciously cutting or otherwise injuring or disturbing a harness, conveyance, tent, or other property belonging to any person in attendance upon such meeting;

Shall be guilty of a misdemeanor. [2499.]

**§ 339. VAGRANCY.**

Every—

1. Person who asks or receives any compensation, gratuity or reward for practicing fortune telling, palmistry or clairvoyance; or,
2. Person who keeps a place where lost or stolen property is concealed; or,
3. Person practicing or soliciting prostitution or keeping a house of prostitution; or,
4. Common drunkards found in any place where intoxicating liquors are sold or kept for sale, or in an intoxicated condition; or,
5. Common gambler found in any place where gambling is conducted or where gambling paraphernalia or devices are kept; or,
6. Healthy person who solicits alms; or,
7. Lewd, disorderly or dissolute person; or,
8. Person who wanders about the streets at late or unusual hours of the night without any visible or lawful business; or,
9. Person who lodges in any barn, shed, shop, out-house, vessel, car, saloon, or other place not kept for lodging purposes without the permission of the owner or person entitled to the possession thereof; or,
10. Person who lives or works in a house of prostitution or solicits for any prostitute or house of prostitution; or,
11. Person who solicits business for an attorney around any court, jail, morgue or hospital, or elsewhere; or
12. Habitual user of opium, morphine, alkaloid-cocaine or alpha or beta eucaine, or any derivation, mixture or preparation of any of them; or,
13. Person having no visible means of support, who does not seek employment, nor work when employment is offered to him; or,
14. Person who by his own confession thereto or prior conviction thereof is known to have been guilty of larceny, burglary, robbery or any crime of which fraud or an intent to defraud is an element, who shall be found in any drinking saloon or cellar, or any public dance-hall or music-hall where intoxicating liquors are sold, or be found intoxicated, or who, except upon law-

ful business, shall go about any dark street or alley or any residence section of any city or town in the night-time, or loiter about any steamboat landing, passenger depot, banking institution or crowded street, shop or thoroughfare, or any public meeting or gathering, or place where people gather in crowds—

Is a vagrant, and shall be punished by imprisonment in the county jail for not more than six months, or by a fine of not more than five hundred dollars. [2688.]

## CHAPTER XIX.

### CONSERVING THE PEACE.

- § 340. The peace bond.
- § 341. Complaint for peace bond.
- § 342. Warrant on complaint.
- § 343. Trial and recognizance.
- § 344. Imprisonment in default of bond.
- § 345. Discharge on giving bond.
- § 346. Appeal to superior court.
- § 347. Bond effective on failure to prosecute appeal.
- § 348. Judgment of appellate court.
- § 349. Peace recognizance to be certified to superior court.
- § 350. Complainant to pay costs of prosecution, when.
- § 351. Costs (when defendant may be liable).
- § 352. Summary recognizance for offense in presence of the court.
- § 353. Penalty on bond may be remitted.
- § 354. Hearing and transcript to superior court.
- § 355. Rights of surety on peace bond.
- § 356. Either singular or plural number.

The justice, as well as certain other officers, is a conservator of the peace. This is one of his oldest duties. He has authority to dispel riotous assemblies of three or more persons, and for that purpose may summon aid to assist in preserving the peace. When circumstances require that he call to his aid a body of armed men, such body is known as a "posse comitatus," which means literally, "body of the county." Persons are required to serve in the posse when called upon, and their services are voluntary in so far that they cannot recover compensation therefor.

#### § 340. THE PEACE BOND.

One of the greatest and most effective agencies for the preservation of the peace is the bond which binds a member of society for any offense which he may commit against the person or property of another. This bond is issued upon the complaint of a person who has been subjected to threats, as where A threatens to kill, maim or wound B, or to do damage to B's property. The complainant swears before

the justice, who issues a warrant and the matter is examined into. If it prove that A's person or property are in danger at the hands of B, the justice will require B to give the peace bond.

Justices of the peace shall have the power to cause all laws made for the preservation of the public peace to be kept; and in execution of that power may require persons to give security to keep the peace, or for their good behavior, or both, in the manner herein provided. [1936.]

### FORM.

In Justice's Court.

Before John E. Carroll, Justice of the Peace, in and for Seattle Precinct, King County, State of Washington.

No. ....

State of Washington,	}
Plaintiff,	
v.	
.....,	
Defendant.	}

### RECOGNIZANCE TO KEEP THE PEACE.

State of Washington,  
County of King,—ss.

Whereas, on the .... day of ....., A. D. 19...., the above-named defendant ..... brought before John E. Carroll, a Justice of the Peace aforesaid, charged upon the complaint of ..... with threatening to ....., and whereas, upon the hearing and examination of said complaint it did appear that there is just cause to fear that said ..... will commit said offense;

Now, therefore, we, the said ....., as principal, and ....., as sureties, do bind ourselves and our and each of our heirs, executors and administrators, jointly and severally, unto the state of Washington in the sum of ..... dollars, to be paid to the state of Washington.

Conditioned that if said ..... shall well and truly keep the peace and be of good behavior toward all the people of the state of Washington, and especially

toward said ..... for the term of ..... from and after the date hereof, then this obligation shall become void; otherwise it shall remain in full force and effect.

In witness whereof, the parties hereunto have set their hands and seals this .... day of ....., A. D. 19.....

Principal.

Sureties	{	..... [Seal]
		..... [Seal]
		..... [Seal]
		..... [Seal]

State of Washington,  
County of King,—ss.

....., being first duly sworn, each for himself, on oath says: I am a resident of the state of Washington; I am not a counselor or attorney at law, sheriff, clerk of the superior court, or other officer of such court, and am worth the said ..... the sum of ..... dollars, the said ..... the sum of ..... dollars, the said ..... the sum of ..... dollars, the said ..... the sum of ..... dollars, over and above all debts and liabilities, and exclusive of property exempt from execution.

.....  
.....  
.....  
.....

Subscribed and sworn to before me this .... day of ....., A. D. 19.....

Justice of the Peace, Seattle Precinct, King County,  
State of Washington.

No. .... In Justice's Court. Before John E. Carroll, Justice of the Peace, Seattle Precinct, King County, State of Washington. The State of Washington, Plaintiff, v. ...., Defendant. Recognizance to Keep the Peace. Filed this .... day of ....., A. D. 19.....  
....., Justice of the Peace.

The matter is first brought before the justice on the complaint of a person threatened by another. The one threatened and such witnesses as he may have are examined by

the justice, who reduces the complaint to writing and the same is sworn to by complainant.

**§ 341. COMPLAINT FOR PEACE BOND.**

Whenever complaint shall be made to any magistrate that any person has threatened to commit an offense against the property or person of another, the magistrate shall examine the complaint and any witness who may be produced on oath, and reduce such complaints to writing, and the same shall be subscribed by the complainant. [1937.]

**§ 342. WARRANT ON COMPLAINT.**

If the examination shows that the complainant is in jeopardy at the hands of the defendant, warrant of arrest issues.

If, upon the examination, it shall appear that there is just cause to fear that such offense may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of and bring him before such magistrate or some other magistrate, or court having jurisdiction of the cause. [1939.]

**FORM.**

**WARRANT TO KEEP THE PEACE.**

The State of Washington,  
County of . . . . .,—ss.

To the Sheriff or Any Constable of Said County:

Whereas, A B has this day complained in writing under oath to the undersigned, one of the justices of the peace in and for said county, that he has just cause to fear and does fear C D, late of said county, will [here state the threatened injury or violence, as sworn to]; therefore, in the name of the state of Washington, you are commanded to apprehend the said C D and bring him forthwith before me, to show cause why he should not give security to keep the peace and be of good behavior toward all people of this state, and the said A B especially, and further to be dealt with according to law.

Given under my hand this . . . . day of . . . . .,  
19 . . . .

J P,  
Justice of the Peace.

**§ 343. TRIAL AND RECOGNIZANCE.**

The defendant being arrested, the case comes for trial as in any other matter, and the complaint having been found justified, the justice binds the defendant over to keep the peace to all the people of the state and especially toward the complainant.

The magistrate before whom any person is brought upon charge of having made threats as aforesaid, shall, as soon as may be, hear and examine the complaint. And if it shall appear that there is just cause to fear that any such offense will be committed by the party complained of, he shall be required to enter into recognizance with sufficient sureties, in such sum as the magistrate shall direct, towards all the people of the state, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding one year, but he shall not be ordered to recognize for his appearance at the superior court unless he is charged with some offense for which he ought to be held to answer at said court. [1940.]

Failure to give proper security makes the defendant liable to imprisonment for the length of time for which he was to be secured.

**§ 344. IMPRISONMENT IN DEFAULT OF BOND.**

If the person so ordered to recognize shall fail to enter into such recognizance, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment with the sum and time for which security was required. [1941.]

The order to give bond may be appealed in the manner of appeals from the justice court in criminal actions.

**§ 345. DISCHARGE ON GIVING BOND.**

Any person committed for not finding sureties or refusing to recognize as required by the magistrate may be discharged by any judge or justice of the peace, on giving such security as was required. [1944.]

**§ 346. APPEAL TO SUPERIOR COURT.**

An appeal may be taken from the order of a magistrate requiring a person to give security to keep the peace or for good behavior. Such appeal shall be taken in the same manner and subject to the same conditions as appeals from justices' courts in criminal actions, and the magistrate may require recognizances of the appellant and the witness as in appeals in such criminal actions. [1922.]

**§ 347. BOND EFFECTIVE ON FAILURE TO PROSECUTE APPEAL.**

The bond remains in full force and effect where one fails to prosecute his appeal to the superior court.

If any party appealing from such order of a magistrate shall fail to prosecute his appeal, his recognizance shall remain in full force and effect as to any breach of the condition, without an affirmance of the judgment or order of the magistrate, and shall also stand as security for costs which shall be ordered by the court appealed to to be paid by the appellant. [1924.]

**§ 348. JUDGMENT OF APPELLATE COURT.**

The court before which such appeal is prosecuted may affirm the order of the justice or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution as may be deemed just and reasonable. [1923.]

**§ 349. PEACE RECOGNIZANCE TO BE CERTIFIED TO SUPERIOR COURT.**

Every recognizance taken pursuant to the foregoing provisions shall be transmitted to the superior court for the county within ten days, and shall there be filed of record by the clerk. [1945.]

It may be that when the magistrate comes to examine the complaint on which a peace bond is prayed for, he will be obliged to dismiss the action as one that is frivolous or else was inspired by malice and the whole action unfounded. In

that case the party complaining will have to pay all the costs of prosecution, and may be committed to jail until the same are paid.

**§ 350. COMPLAINANT TO PAY COSTS OF PROSECUTION, WHEN.**

If upon examination, it shall appear that there is not just cause to fear that any such offense will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officers for their fees, as for his own debt. [1942.]

**§ 351. COSTS (WHEN DEFENDANT MAY BE LIABLE).**

When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give good security for the peace, or for his good behavior, the magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged. [1943.]

**§ 352. SUMMARY RECOGNIZANCE FOR OFFENSE IN PRESENCE OF THE COURT.**

A disturbance of the peace in the presence of the justice, as a riot or affray in the courtroom, may be punished by requiring recognizance without further proof or process.

Every person who shall, in the presence of any magistrate, or before any judge of a court of record, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person who, in the presence of such judge or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or other proof, to recognize for keeping the peace or being of good behavior for a term not exceeding three months, and in case of refusal may be committed as before directed. [1946.]

**§ 353. PENALTY ON BOND MAY BE REMITTED.**

Whenever upon a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable. [1947.]

**§ 354. HEARING AND TRANSCRIPT TO SUPERIOR COURT.**

It shall be the duty of every magistrate examining a person charged with an offense, or with an intention to commit an offense, to examine all the witnesses he shall deem material, and reduce their testimony to writing, a copy of which, whether the accused is discharged, committed, or held to bail, or shall take an appeal, he shall transmit to the clerk of the court having jurisdiction of the offense. [1938.]

**§ 355. RIGHTS OF SURETY ON PEACE BOND.**

The surety on a peace bond may surrender the principal, and after such surrender the surety is not further liable.

Any surety in recognizance to keep the peace, or for good behavior or both, shall have the same authority and right to take and surrender his principal as if he had been bail for him in a civil cause, and upon such surrender, shall be discharged and exempt from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance, and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace, for the residue of the term, and thereupon shall be discharged. [1948.]

**§ 356. EITHER SINGULAR OR PLURAL NUMBER.**

Any word used in this act in the singular or plural number shall, whenever it is necessary to give effect and force to the same, according to the true intent thereof, be taken and construed to mean either.

## CHAPTER XX.

### CONTEMPT PROCEEDINGS.

- § 357. Persons guilty of contempt.
- § 358. Punishment.
- § 359. Form of warrant.
- § 360. Form of judgment.
- § 361. Contempt in presence of the court.
- § 362. Cause to be heard.
- § 363. Commitment of defendant.

The official proceedings before a justice of the peace are to be conducted with dignity, and the administration of justice even in this small court must not be interrupted by insolent behavior. For the preservation of proper decorum, the justice has authority to punish those who infringe this rule.

#### § 357. PERSONS GUILTY OF CONTEMPT.

In the following cases, and no others, a justice of the peace may punish for contempt:

1. Persons guilty of disorderly, contemptuous and insolent behavior towards such justice while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tend to interrupt such proceedings, or impair the respect due to his authority.
2. Persons guilty of any breach of the peace, noise or disturbance, tending to interrupt the official proceedings of such justice.
3. Persons guilty of resistance or disobedience to any lawful order or process made or issued by him. [1891.]

#### § 358. PUNISHMENT.

Punishment for contempt may be by fine, not exceeding twenty-five dollars, or by imprisonment in the county jail not exceeding two days, at the discretion of the justice, unless otherwise provided by statute. [1892.]

### § 359. FORM OF WARRANT.

The following is the form of warrant for contempt:

State of Washington,  
..... County,—ss.

To the Sheriff or Any Constable of Said County:

In the name of the state of Washington, you are hereby commanded to apprehend A B and bring him before J P, one of the justices of the peace of said county, at his office in said county, to show cause why he should not be convicted of a contempt alleged to have been committed on the .... day of ....., A. D. 19...., before the said justice, while engaged as a justice of the peace in a judicial proceeding.

Dated this .... day of ....., A. D. 19....

J P,  
Justice of the Peace. [1895]

### § 360. FORM OF JUDGMENT.

The judgment should be entered in the docket in the following form:

Upon the conviction of any person for contempt, an entry thereof shall be made in the docket of such justice, stating the particular circumstances of the offense, and the judgment rendered thereon, and may be in the following form:

State of Washington,  
..... County,—ss.

Whereas, on the .... day of ....., A. D. 19...., while the undersigned, one of the justices of the peace for said county, was engaged in the trial of an action between C D, plaintiff, and E F, defendant, in said county, A B, of the said county, did interrupt the said proceedings and impair the respect due to the authority of the undersigned, by [here describe the cause particularly]. And whereas, the said A B was thereupon required by the undersigned to answer for the said contempt and show cause why he should not be convicted thereof. And whereas, the said A B did not show cause against the said charge—be it therefore ordered that the said A B is adjudged to be guilty and is convicted of the contempt aforesaid, and is adjudged by the un-

dersigned to pay a fine of ..... dollars [or be imprisoned, etc.].

Dated this .... day of ....., A. D. 19.....

J P,

Justice of the Peace. [1896.]

### § 361. CONTEMPT IN PRESENCE OF THE COURT.

If the offender be present he may be summarily arraigned by the justice, and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon. [1894.]

### § 362. CAUSE TO BE HEARD.

No person shall be punished for a contempt before a justice of the peace, until an opportunity shall have been given to him to be heard in his defense; and for that purpose the justice may issue his warrant to bring the offender before him. [1893.]

### § 363. COMMITMENT OF DEFENDANT.

If any person convicted of a contempt be adjudged to be imprisoned, a warrant of commitment shall be issued by the justice. If he be adjudged to pay a fine, a process may be issued to collect the same; it shall forthwith be paid by the justice into the county treasury. [1897.]

## CHAPTER XXI.

### JUSTICE OF THE PEACE AS POLICE JUDGE.

- § 364. Establishment of police court.
- § 365. Jurisdiction and duties of police judge.
- § 366. General powers.
- § 367. Police powers of justices.
- § 368. In cities of the third class.
- § 369. In cities of the fourth class.
- § 370. In cities of the first class.

Cities of the first and second class have police judges whose duty it is to enforce the ordinances of such cities and punish misdemeanors.

#### § 364. ESTABLISHMENT OF POLICE COURT.

A police court is hereby established in such city, which court shall always be open, except upon nonjudicial days, and upon such days may transact criminal business only. [7656.]

The general duties of such police judge are defined as follows:

#### § 365. JURISDICTION AND DUTIES OF POLICE JUDGE.

The police court of such city shall have jurisdiction of the following public offenses committed within such city:—

1. Petit larceny;
2. Assault or battery not charged to have been committed upon a public officer in the discharge of his official duty or with intent to kill;
3. Breaches of the peace, riots, affrays, committing willful injury to property, and all misdemeanors punishable by fine not exceeding five hundred dollars or by imprisonment not exceeding six months, or by both such fine and imprisonment;
4. Of proceedings respecting vagrants, loud or disorderly persons;

5. Of all proceedings for violation of any ordinance of said city, both civil and criminal; of any and all suits to recover taxes, general or special, levied in such city for city purposes, and all suits to recover any assessment levied in such city for the improvement of streets, avenues, levees, sidewalks and public squares, and for the opening or laying out of the same when the amount of said tax or assessment sought to be collected against the person, firm, or corporation assessed is less than three hundred dollars; provided, no lien upon the property taxed or assessed for the nonpayment of the taxes or assessment is sought to be foreclosed by said suit;

6. Of an action for the collection of money due to such city, or from the city to any person, firm or corporation, when the amount sought to be collected is less than three hundred dollars;

7. Of an action for the breach or violation of any official bond given by any city officer, and for the breach of any contract, and any action for damages in which the city is a party, or is in any way interested, and on all forfeited recognizances given to or for the benefit or in behalf of such city, and upon all bonds given upon any appeal taken from the judgment of said court in any action above named when the amount claimed exclusive of cost, is less than three hundred dollars;

8. Of an action for the recovery of personal property belonging to the city, when the value of the property exclusive of the damages for the taking or detention is less than three hundred dollars;

9. Of an action for the collection of any license required by any ordinance of the city:

10. The police court shall have exclusive jurisdiction of all proceedings mentioned in this section, and no justice of the peace in such city shall have power to try and decide any cases of the classes mentioned in said section; provided, that any justice of the peace of such city, who may be designated in writing by the mayor or president of the city council thereof for the purpose, shall have power to preside in and to hold a police judge's court of said city in the cases in which the police judge is a party, or in which he is directly interested, or when the judge is related to either party by consanguinity or affinity within the third degree;

and also in case of the sickness or temporary absence of the judge, or his inability to act from any cause; and in all such cases, and during such sickness, temporary absence, or inability, the justice so designated shall act as police judge, and shall have and exercise all the powers, jurisdiction, and authority which are or may be by law conferred upon said court or judge. [7657.]

The police judge is further empowered to hear cases which are properly triable in the superior court, and may commit and hold the offender to bail for his appearance in the proper court.

### § 366. GENERAL POWERS.

The judge of said court shall also have power to hear cases for examination, and may commit and hold the offender for trial in the proper court, and may try, condemn, or acquit, and carry his judgment into execution, as the case may require, according to law; and to punish persons guilty of contempt of court, and shall have power to issue warrants of arrest in cases of a criminal prosecution for the violation of a city ordinance, as well as in case of the violation of the criminal law of the state; also all subpoenas, and all other processes necessary to the full and proper exercise of his powers and jurisdiction in all criminal trials before the police judge for the violation of the criminal law of the state, made triable before such court; the defendant shall be entitled, if demanded by him, to a jury trial, but a trial by jury may be waived by the defendant in all such cases, and upon such waiver the court shall proceed and try the case. [7658.]

### § 367. POLICE POWERS OF JUSTICES.

The justices of the peace in and for the township embracing such city shall have the same powers as the same officers in any justice court of the county, and shall have and may exercise like powers and authority; provided, however, that no justice of the peace in such city shall have power to conduct or try and decide any proceedings or cases of the classes mentioned in section two hundred and six of this act, [probably section 7657] but nothing in this section shall be construed to prevent any of the justices in said city from acting as police judge. [7666.]

**§ 363. IN CITIES OF THE THIRD CLASS.**

There shall also be elected, as hereinafter specified, a police justice, or so many as the council may deem necessary. The justice (or justices so elected) may be selected from the justices of the peace duly elected under the laws of the state of Washington, and while acting in city or town matters may hold office for that purpose anywhere within the city or town. Such justices of the peace shall have jurisdiction over all offenses defined by any ordinance of the city or town, and all other actions brought to enforce or recover any penalty or forfeiture declared or given by any such ordinance, and full power to hear and determine all causes, civil or criminal, arising under such ordinance, and to pronounce judgment in accordance therewith. All civil or criminal proceedings before such justice of the peace, under and by authority of this chapter, shall be governed and regulated by the general laws of the state relating to justices of the peace and to their practices and jurisdiction, and shall be subject to review in the court of the proper county by certiorari or appeal, the same as in other cases. All officers elected by the council are subject to removal by that body at any time, for cause deemed sufficient. [7700.]

**§ 369. IN CITIES OF THE FOURTH CLASS.**

There shall also be elected, as hereinafter specified, a police justice, or so many as the council may deem necessary. The justice or justices so elected may be selected from the justices of the peace duly elected under the laws of the state of Washington, and while acting in town matters may hold office for that purpose anywhere within the town. Such justices of the peace shall have jurisdiction over all offenses defined by any ordinance of the town, and all other actions brought to enforce or recover any penalty or forfeiture declared or given by any such ordinance, and full power and authority to hear and determine all cases, civil or criminal, arising under such ordinance, and to pronounce judgment in accordance therewith. All civil or criminal proceedings before such police justice, under and by authority of this act, shall be governed and regulated by the general laws of the state relating to justices of the peace and to their practices and jurisdiction, and shall be subject to review in the court of the proper district by certiorari or appeal the same as in

other cases. All officers elected by the council are subject to removal by that body at any time for cause deemed sufficient. [7748.]

**§ 370. IN CITIES OF THE FIRST CLASS.**

Within ten days after such election (that is, the general election) the mayor of the city shall appoint one of the justices (of the peace) so elected the police justice or police judge of such city, who shall before entering upon the duties of his office as police judge, give such additional bond for the faithful performance of his duties as the city council may by ordinance direct. [7520.]

## CHAPTER XXII.

## JUSTICE OF THE PEACE AS NOTARY.

§ 371. Justice of the peace as notary.

§ 372. General form of acknowledgment.

## § 371. JUSTICE OF THE PEACE AS NOTARY.

The justice of the peace is also a notary public for all purposes except that of protesting negotiable instruments.

The justice may:

1. Take and certify the proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged;

2. Administer oaths and affirmations generally.

3. Take or certify an affidavit or deposition to be used in any court of justice or tribunal of this state.

## § 372. GENERAL FORM OF ACKNOWLEDGMENT.

A certificate of acknowledgment substantially in the following form shall be sufficient:

State of Washington,  
County of .....,—ss.

I [here give name of officer and official title] do hereby certify that on this .... day of ....., 19...., personally appeared before me [names of parties appearing, and if one is a wife, add "his wife"] to me known to be the individual or individuals described in and who executed the within instrument and acknowledged that he [she or they] signed and sealed the same as his [her or their] free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this .... day of ....., A. D. 19....

[Signature of officer.]

## CHAPTER XXIII.

## JUSTICE OF THE PEACE AS CORONER.

The law provides that under certain circumstances the justice of the peace shall discharge the duties of coroner. The coroner is a county officer, whose duty it is to inquire into the causes and manners of those deaths which shall come under their supervision. In the absence or incapacity of the sheriff of the county, the coroner performs the duties of that office with its powers and responsibilities; his bond binding him for those duties in the same way that the sheriff is bound.

When there is reason to believe that the death of a person has been caused by unlawful means, or if the cause of death be unknown, the coroner, upon such information, is required to summon a jury of six men, qualified to serve as jurors, who shall inquire into the death of the decedent. The inquest shall take place at the place where the body lies.

He may also issue subpoenas to compel the attendance of witnesses, whom he will examine under oath. The witness may be punished for refusing to obey this summons just as he would be if he disobeyed the summons of the justice of the peace.

The jurors render their verdict in writing; the verdict showing:

Who the person killed is;

Where, when, by what means he came to death;

Who is guilty of his death, if any;

And whether the death be caused by criminal means of another.

If the jury find a person guilty of causing the unlawful death, the same shall be arrested upon the coroner's warrant, which shall be served in all respects as upon the warrant of arrest.

Any property belonging to the deceased must be turned over to the county treasurer within thirty days after the inquest, unless claimed in the meantime by the legal representatives of the deceased.

If the office of coroner be vacant, or he be absent or unable to attend, the duties of his office may be performed by any justice of the peace in the county, with the like authority, and subject to the same obligations and penalties as the coroner. [4029.]

## CHAPTER XXIV.

## JUSTICE OF THE PEACE AS DEPUTY STATE FIRE MARSHAL.

The chief of the fire department of every city having a paid or organized volunteer fire department, the city marshal or chief of police of every incorporated town or city having no paid or organized volunteer fire department, and the justices of the peace outside of incorporated towns or cities shall be ex-officio deputy state fire marshals within their respective jurisdictions. They shall investigate the cause, origin, and circumstances of every fire occurring within their respective jurisdictions by which property has been destroyed, and especially making investigation as to whether such fire was the result of carelessness or design. Such investigation shall be begun within two days, not including Sunday, of the occurrence of such fire, and the fire marshal shall have the right to supervise and direct such investigation whenever he deems it expedient or necessary. The officer making such investigation of fires shall forthwith notify said fire marshal, and shall within one week of the occurrence of the fire, furnish to the said fire marshal a written statement of all the facts relating to the cause and origin of the fire, the value of the property destroyed and the amount of insurance, if any carried thereon, and such other information as may be called for by the blanks provided by the said fire marshal. The state fire marshal shall keep in his office a record of all fires occurring in the state, together with all facts, statistics and circumstances, including the origin of the fires, which may be determined by the investigations provided by this chapter; such record shall at all times be open to the public inspection. [6071.]

## CHAPTER XXV.

### JUSTICES' OFFICE EQUIPMENT, FEES, ETC.

- § 373. Clerk and assistance.
- § 374. The justice's docket.
- § 375. Fees of justice of the peace.
- § 376. Fees of salaried justices.
- § 377. Other fees not to be collected.
- § 378. Fees to be paid in advance.
- § 379. Salary of justice pro tem.
- § 380. How justices' salaries are paid.
- § 381. Fee-book and accounts.
- § 382. Salary in city of more than five thousand.
- § 383. Salary in cities of over thirty-five thousand.
- § 384. Moneys to be paid to county treasurer.

#### § 373. CLERK AND ASSISTANCE.

The justice's court in first and second class cities is allowed a clerk to assist him with his work, and such other help as he may need for the transaction of business. The county commissioners also provide him with stationery, books and blanks.

The board of county commissioners shall allow each justice in cities of the first class, and may allow each justice in cities of the second class, one clerk, at such salary as they may designate; said clerk to be paid in the same manner and at the same time as the said justices. The board of county commissioners may furnish for the use of each of the justices provided for in this act a suitable office room; and also, they shall furnish to each of the said justices and constables all necessary books, blanks and stationery for conducting the public business of his office; said office room, books, blanks and stationery to be paid for on the warrant of the auditor out of the general fund of the county. [6547.]

#### § 374. THE JUSTICE'S DOCKET.

The docket is the story of the action as inscribed by the justice of the peace and is the most important book of the office. In it every step of the proceedings is recorded.

Every justice shall keep a docket in a well-bound book in which he shall enter:

1. The title of all actions commenced before him.
  2. The object of the action or proceeding, and if a sum of money be claimed, the amount of the demand.
  3. The date of the notice and the time of its return; and if an order to arrest the defendant be made, the statement of the facts on which the order is issued.
  4. The time when the parties, or either of them, appear, or their nonappearance, if default be made.
  5. A brief statement of the nature of the plaintiff's demand, and the amount claimed; and if any setoff be pleaded, a similar statement of the setoff, and the amount estimated, and every motion, rule, order, and exception with the decision of the court thereon.
  6. Every continuance, stating at whose request, and for what time.
  7. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the trial and return of the jury.
  8. The names of the jury who appear and are sworn; the names of the witnesses sworn, and at whose request.
  9. The verdict of the jury, and when received; and if the jury disagree and are discharged, the fact of such disagreement and discharge.
  10. The judgment of the court, and the time when rendered.
  11. The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt and costs, and the fees due to each person separately.
  12. The fact of an appeal having been made and allowed, and the time when.
  13. Satisfaction of the judgment, or any money paid thereon, and the time when.
  14. And such other entries as may be material.
- [1770.]

The following is the list of fees chargeable by the justice:

### § 375. FEES OF JUSTICE OF THE PEACE.

The fees and compensation of justices of the peace shall be as follows, to wit:

For docketing each cause, issuing notice, filings and judgment to be paid when case is filed....	\$1.00
Attachments.. . . . .	1.00
For docketing, filings and order in garnishment..	1.00*
Replevin.... . . . .	1.00
For trial of each cause.....	1.00
For issuing subpoena, any number of names....	.25
For approving bond, including justification....	.50
For order and filings for publication of summons.	50
For each continuance or adjournment by consent or on motion of either party, except first continuance.... . . . .	.25
For order, transcript and filings on change of venue.... . . . .	1.00
For transcript of judgment.....	.75
For issuing writ of venire.....	.50
For solemnization of marriage and making return thereof..... . . . .	2.50
For taking affidavits and acknowledgments, each	.25
For attending with clerk of county commissioners at the opening of polls, per diem.....	3.00
For taking depositions, each folio.....	.10
Commission for deposition.....	.50
For issuing warrant in criminal cases.....	.50
For taking recognizance of bail, including justification..... . . . .	.75
For committing to jail.....	.50
[1864.]	

### § 376. FEES OF SALARIED JUSTICES.

When the justice receives a regular salary, two dollars is sufficient to carry the case to judgment.

In any civil action commenced before or transferred to a justice of the peace receiving a salary, the plaintiff may at the time of such commencement or transfer, pay to such justice the sum of two dollars, which sum shall be all the fees and charges which any party to such action shall be compelled to pay to such justice up to and including the rendition of judgment in such action, unless process in replevin, attachment or garnishment shall issue therein, in which case the party procuring such process may pay to such justice the sum of one dollar as full payment for the fees and charges of such justice incident to the proceedings under such process;

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\*Abolished by act of 1911.

but in case said action is transferred from such justice before final judgment, such justice shall repay to any party making such payments any sum in excess of what said party would have been compelled to pay by the last section. [1865.]

### § 377. OTHER FEES NOT TO BE COLLECTED.

No justice of the peace in any civil action or proceeding shall be entitled to or receive any fees or compensations not provided for by this act. [1866.]

### § 378. FEES TO BE PAID IN ADVANCE.

Said justices and constables shall not in any case, except for the state or county and other cases provided by law, perform any official service unless the fees prescribed for such services are paid in advance, and on such payment the said justices and constables must perform the services required and shall give receipts for all fees collected, whenever requested. For every failure or refusal to perform official duty when the fees are tendered, said justices and constables shall be liable on their official bonds. [6549.]

### § 379. SALARY OF JUSTICE PRO TEM.

A justice pro tem. is remunerated at the rate of five dollars a day as police judge.

In case of the temporary absence or inability of the police judge to act the mayor shall appoint, from among the practicing attorneys qualified electors of the city, a police judge pro tempore, who, before entering upon the duties as such, shall take and subscribe an oath as other judicial officers, and while so acting he shall have all the powers of the police judge: Provided, however, such appointment shall not continue for a longer period than the absence or disability of the police judge. Such police judge pro tempore to receive compensation at the rate of five dollars a day to be paid by the city.

### § 380. HOW JUSTICES' SALARIES ARE PAID.

Payment is monthly out of the county treasury.

The salaries of justices of the peace and constables, provided for in this act, shall be paid monthly out of the county treasury, and from the same funds out of

which other salaried county officers are paid, and it shall be the duty of the county auditor, on the first Monday of each and every month, to draw his warrant upon the county treasurer in favor of each of said justices and constables for the amount of salary due him, under the provisions of this act for the preceding month: Provided, that the auditor shall not draw his warrant for the salary of any such officer for any month until the latter first shall have filed his duplicate receipt with the auditor, properly signed by the treasurer, showing that he has made the statement and settlement for that month as required by this act. [6546.]

### § 381. FEE-BOOK AND ACCOUNTS.

#### Book:

Each of the said justices of the peace and constables shall keep a fee-book, open to public inspection during office hours, in which must be entered at once and in detail all fines and fees or compensation of whatever nature, kind or description, collected or chargeable. On the first Monday of each and every month the said justices of the peace and constables must add up each column in their fee-books to the first of each month and set down the totals, and on the expiration of the term of each officer they must deliver to the county auditor all fee-books kept by them. [6543.]

#### Accounts of Fees:

The justices of the peace and constable shall charge and collect for the use of their respective counties, and pay into the county treasury on the first Monday in each month, and on going out of office, all the fees now or hereafter allowed by law paid or chargeable in all cases, except such fees as are a charge against the county or state, and also on the first Monday in each month, and on going out of office, the said justices of the peace shall pay into the county treasury all moneys they shall have received on account of fines collected for violations of any state law. [6542.]

#### Fees Go to Treasurer:

All fees and compensation collected from any source, and all fines collected for violations of any state law, shall be paid to the county treasurer on the first Monday of the following month, and the said justices and con-

stable at the same time shall deliver to such treasurer a statement and copy of the fee-book for the month last past, showing by items the sources from which such fees and fines were derived, and shall append thereto an affidavit that they have received no other money for fees or fines, not before paid over to such treasurer. The treasurer shall file and preserve in his office said statements and affidavits, and shall issue to said justices and constables one original and one duplicate receipt therefor, and the said justices and constables shall preserve one in their offices and file the duplicate with the county auditor, whereupon the auditor shall charge the treasurer with the amount shown by the receipt. [6544.]

#### Salary Fund:

All fees by this act directed to be paid into the county treasury, when received shall be put into the salary fund of the county treasury. [6545.]

### § 382. SALARY IN CITY OF MORE THAN FIVE THOUSAND.

The salaries of justices of the peace and constables elected at the general election to be held in November, eighteen hundred and ninety-eight, and biennially thereafter in cities of more than five thousand inhabitants shall be as follows:

1. Salaries of justices of the peace, twelve hundred dollars per annum, payable as now provided by law;
2. Salaries of constables, seven hundred and twenty dollars per annum, payable as now provided by law. [6535.]

### § 383. SALARY IN CITIES OF OVER THIRTY-FIVE THOUSAND.

The salaries of justices of the peace and constables hereafter elected or appointed in cities having a population of more than thirty-five thousand (35,000) inhabitants shall be as follows: (1) Salaries of justices of the peace in cities having a population of more than thirty-five thousand (35,000) inhabitants, fifteen hundred dollars (\$1,500) per annum, payable as now provided by law. (2) Salaries of constables in cities having a population of more than thirty-five thousand (35,000) in-

habitants, nine hundred and sixty dollars (\$960) per annum, payable as now provided by law. [6536.]

In cities of eighty thousand or more inhabitants the justice receives eighteen hundred (\$1,800) dollars per annum and the constables receive twelve hundred (\$1,200) dollars per annum.

**§ 384. MONEYS TO BE PAID TO COUNTY TREASURER.**

It shall be the duty of every justice, on the first Mondays in January and July in every year, and on going out of office to pay over to the treasurer of his county all money he may have received on account of fines, and all fees which may have remained unclaimed in his hands for twelve months; and he shall, at the same time, deliver to such treasurer a statement in writing, showing by items the sources from which such money was derived, and shall append thereto an affidavit that he has received no other money for fines, not before paid over to such treasurer, and has no other fees unclaimed for twelve months in his hands; and the treasurer's receipt therefor he shall file with the auditor, who shall give him a quietus. [6541.]

## CHAPTER XXVI.

### HOW JUSTICES OF THE PEACE ARE ELECTED AND QUALIFY.

- § 385. Election precincts.
- § 386. Number in incorporated cities.
- § 387. In cities of more than five thousand inhabitants.
- § 388. Number in first class cities—Must be a lawyer.
- § 389. In cities of over thirty-five thousand inhabitants.
- § 390. The number of justices.
- § 391. Who are eligible.
- § 392. Term of the office.
- § 393. Certificate and oath.
- § 394. Jurisdiction.
- § 395. New precinct.
- § 396. Liability on bond.
- § 397. Successor in office.
- § 398. Penalty of failure.

#### § 385. ELECTION PRECINCTS.

The following are the statutes governing the election and qualification of justices of the peace, and require no explanation:

That the qualified electors of each election precinct in this state shall, at the next general election, and biennially thereafter, elect one or more justices of the peace as hereinafter provided. [6513.]

#### § 386. NUMBER IN INCORPORATED CITIES.

Each incorporated city in this state, together with any adjoining precincts, if any there are, lying partly within and partly without said city, shall, for the purposes of this chapter, and for fixing and limiting the number of justices of the peace to be elected in such city, be deemed and considered one precinct, and the qualified electors within the limits thereof, shall, at each general election at the several polling places therein, vote for and elect two justices of the peace, and no more. [6531.]

This provision is superseded in the following statute as regards cities of over five thousand inhabitants.

**§ 387. IN CITIES OF MORE THAN FIVE THOUSAND INHABITANTS.**

There shall be elected at the general election to be held in November, 1898, and biennially thereafter, in cities of more than five thousand inhabitants, only one justice of the peace and one constable and no more. [6532.]

**§ 388. NUMBER IN FIRST CLASS CITIES—MUST BE A LAWYER.**

In cities of the first class, the justice of the peace must be a regularly admitted attorney at law.

Each incorporated city of the first class in this state, together with any adjoining precincts, if any there are, lying partly within and partly without said city, shall for the purposes of this act, and for fixing and limiting the number of justices of the peace to be elected in such city, be deemed and considered one precinct, and the qualified electors within the limits thereof shall, at each general election vote for and elect two justices of the peace, who shall be attorneys at law, duly admitted to practice in the supreme court of the state, and one constable. [6533.]

In the city of Seattle there are three justices of the peace and also three constables, the following legislation having authorized the election of such additional officers.

**§ 389. IN CITIES OF OVER THIRTY-FIVE THOUSAND INHABITANTS.**

There shall be elected at the general election to be held in November, 1906, and biennially thereafter, in each city having a population of more than thirty-five thousand (35,000) inhabitants, and less than eighty thousand (80,000) inhabitants, two justices of the peace and two constables, and in cities having a population of more than eighty thousand (80,000) inhabitants three justices of the peace and three constables, and no more, whose term of office shall be for the period of two years from the second Monday of January following their election. [6534.]

§ 390. THE NUMBER OF JUSTICES.

Each election precinct shall be entitled to elect one justice of the peace, but the county commissioners of any county may, at the time of organizing the precinct, or at any time thereafter, authorize the election of one additional justice of the peace in any precinct. [6514.]

§ 391. WHO ARE ELIGIBLE.

No person shall be eligible to the office of justice of the peace who is not a qualified voter, and who has not been a resident of the county in which he is elected six months next preceding his election; nor shall any sheriff, coroner, or clerk of the superior court be eligible to or hold such office. [6516.]

§ 392. TERM OF THE OFFICE.

Every justice of the peace shall hold his office for the term of two years, and until his successor is elected and qualified. [6520.]

§ 393. CERTIFICATE AND OATH.

The election of justice of the peace shall be conducted and return of such election made in the same manner as other elections; and every person duly elected shall be entitled to a certificate of election, and shall take an oath of office; which oath shall be indorsed on the back of the certificate of election, and, together with the certificate, filed in the office of the county auditor. [6517.]

STATUTORY FORM.

BOND OF JUSTICE OF THE PEACE.

Know all men by these presents, that we, J P, A B and C D, are held and firmly bound unto the board of county commissioners of the county of . . . . ., in the state of Washington, in the sum of five hundred dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors and administrators.

Sealed with our seals; dated this . . . . day of . . . . ., A. D. 19. . . .

Whereas, the said J P has been duly elected a justice of the peace, in and for the precinct of . . . . . in the

county of . . . . ., A. D. 19. . . . . Now the condition of the above obligation is such, that if the said J P shall faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office as justice of the peace, then this obligation shall be void, otherwise in full force.

J P. [L. S.]

A B. [L. S.]

C D. [L. S.]

#### § 394. JURISDICTION.

The qualifications, term of office, duties, powers and jurisdiction of justices of the peace shall be as now provided by law, except that no justice of the peace shall hereafter have jurisdiction of any action brought to enforce or collect any claim or demand which said justice had, in any manner, attempted to collect as agent or otherwise. [6515.]

#### § 395. NEW PRECINCT.

When a new precinct shall be divided, and any justice of the peace of the original precinct shall fall into the new one, he shall continue to discharge the duties of justice of the peace until his term of office expires, and his successor is elected and qualified. [6521.]

#### § 396. LIABILITY ON BOND.

Such bond shall be filed in the office of the county auditor; and every person aggrieved by a breach of the condition thereof may, by an action upon the bond, have judgment against the justice and his sureties, for such sum as he may show himself entitled to, with costs and interest at the rate of twenty-five per cent per annum; and upon any such judgment stay of execution shall not be allowed. [6519.]

#### § 397. SUCCESSOR IN OFFICE.

If any justice of the peace shall die, resign or remove out of the precinct for which he may be elected, or his term of office be in any other manner terminated, the docket, books, records and papers appertaining to his office, or relating to any suit, matter or controversy, committed to him in his official capacity, shall be delivered to the nearest justice in the precinct, who may thereupon proceed to hear, try and determine, such

matter, suit or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice before whom such suit or matter was commenced to have done: Provided, that if there be no other justice of the peace in said precinct, such docket, books, records and papers shall be delivered to the county auditor, who, on demand, shall deliver the same to a justice of said precinct, when there shall be one qualified therein, who shall exercise the same powers as though they had been originally delivered to him. [6522.]

### § 398. PENALTY OF FAILURE.

Every person whose duty it is to deliver the dockets, books, records and papers as prescribed in the last section, shall forfeit and pay, for the use of the county, fifteen dollars for every three months' neglect to perform such duty, which sum may be recovered at the suit of any person. [6523.]

## CHAPTER XXVII.

### SOLEMNIZING MARRIAGE.

- § 399. Authority to solemnize.
- § 400. License by county auditor.
- § 401. Affidavit for marriage license, etc.
- § 402. Marriage forbidden in certain cases.
- § 403. Marriage forbidden—Continued.
- § 404. Penalty for violating marriage statute.
- § 405. Authorized officer not to solemnize.
- § 406. Form of ceremony.
- § 407. The marriage certificate.
- § 408. Form of certificate.
- § 409. Certificate to be recorded.
- § 410. Penalty for failure to deliver certificate.
- § 411. Marriages, when valid.
- § 412. Solemnization by unqualified person.
- § 413. Voidable marriages.

The matrimonial relation is properly regarded as a condition or status, but is commonly called a contract—a civil contract—and is so declared to be by the statutes of the state of Washington.

Marriage is a civil contract which may be entered into by males of the age of twenty-one years, and females of the age of eighteen years, who are otherwise capable. [7150.]

The justice of the peace has authority to perform the marriage ceremony together with other officers designated by law. The justice, however, should be familiar with the statutes governing this subject and be acquainted with the qualifications and disqualifications of persons applying to him for his services in this regard.

#### § 399. AUTHORITY TO SOLEMNIZE.

The following named officers and persons are hereby authorized to solemnize marriages, to wit: Judges of the supreme court, judges of the superior courts, any regular ordained minister or priest of any church or re-

ligious denomination anywhere within the state, and justices of the peace within their respective counties. [7154.]

Before the justice of the peace can perform the ceremony which joins two persons in marriage, the county auditor must issue a license to the contracting parties.

#### § 400. LICENSE BY COUNTY AUDITOR.

Before any persons can be joined in marriage they shall procure a license from the county auditor, authorizing any person or religious organization or congregation to join together the persons therein named as husband and wife.

Application is made to the county auditor by both parties personally, together with a witness who shall make certain affidavit as prescribed in the following section. A female under eighteen years of age and over fifteen years shall have the written consent of her parents.

#### § 401. AFFIDAVIT FOR MARRIAGE LICENSE, ETC.

The county auditor, before a marriage license is issued, upon the payment of a license fee of two dollars, shall require each applicant therefor to make and file in his office upon blanks to be provided by the county for that purpose, an affidavit showing that such applicant is not feeble-minded, an imbecile, epileptic, insane, a common drunkard, or afflicted with pulmonary tuberculosis in its advanced stages; provided, that in addition, the affidavit of the male applicant for such marriage license shall show that such male is not afflicted with any contagious venereal disease. He shall also require an affidavit of some disinterested credible person showing that neither of said persons is an habitual criminal, and that the female is over the age of eighteen years and the male is over the age of twenty-one years: Provided, that if the consent in writing is obtained of the father, mother, or legal guardian of the person for whom the license is required, the license may be granted in cases where the female is under the age of eighteen years or the male is under the age of twenty-one years: Provided, that no consent shall be given, nor license issued unless such female be over the age of fifteen years. Such affidavit may be subscribed and sworn to before

any person authorized to administer oaths. Anyone knowingly swearing falsely to any of the statements contained in the affidavits mentioned in this act shall be deemed guilty of perjury and punished as provided by the laws of the state of Washington. [7165.]

License will not be issued to nor marriages permitted between certain persons, as those who stand in certain blood relationships to each other, or who, by reason of disease or degeneracy, are liable to propagate defective children. The policy of society is to encourage and protect the matrimonial condition under all possible reasonable circumstances, but with the advancement of ideas on this subject, certain restrictions have been deemed necessary to the proper protection of society.

#### § 402. MARRIAGE FORBIDDEN IN CERTAIN CASES.

Marriages in the following cases are prohibited:

1. When either party thereto has a wife or husband living at the time of such marriage;

2. When the parties thereto are nearer of kin to each other than second cousins, whether of the whole or half blood, computing by the rules of the civil law;

3. It shall be unlawful for any man to marry his father's sister, mother's sister, father's widow, wife's mother, daughter, wife's daughter, son's widow, sister, son's daughter, daughter's daughter, son's son's widow, daughter's son's widow, brother's daughter, or sister's daughter; it shall be unlawful for any woman to marry her father's brother, mother's brother, mother's husband, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, brother's son, or sister's son, and if any person being within the degrees of consanguinity or affinity in which marriages are prohibited in this section carnally know each other, they shall be deemed guilty of incest, and shall be punished by imprisonment in the state penitentiary for a term not exceeding ten years and not less than one year. [7151.]

#### § 403. MARRIAGE FORBIDDEN—CONTINUED.

No woman under the age of forty-five years, or man of any age, except he marry a woman over the age of

forty-five years, either of whom is a common drunkard, habitual criminal, epileptic, imbecile, feeble-minded person, idiot or insane person, or person who has theretofore been afflicted with hereditary insanity, or who is afflicted with pulmonary tuberculosis in its advanced stages, or any contagious venereal disease, shall hereafter intermarry or marry any other person within this state. [7152.]

A fine of not more than one thousand dollars or imprisonment in the penitentiary for not more than three years is the punishment for the infraction of this section.

#### § 404. PENALTY FOR VIOLATING MARRIAGE STATUTE.

Any person knowingly violating any of the provisions of sections 7152, 7153, or 7164 shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment in the state penitentiary for a period of not more than three years, or by both such fine and imprisonment. [7165.]

Subject to the foregoing punishment is any officer who shall join in marriages forbidden persons.

#### § 405. AUTHORIZED OFFICER NOT TO SOLEMNIZE.

No clergyman or other officer authorized by law to solemnize marriages within this state shall hereafter knowingly perform a marriage ceremony uniting persons in matrimony either of whom is an epileptic, imbecile, feeble-minded person, common drunkard, idiot, insane person, or person who has heretofore been afflicted with hereditary insanity, habitual criminal, or person afflicted with pulmonary tuberculosis in its advanced stages, or any contagious venereal disease, unless the female party to such marriage is over the age of forty-five years. [7153.]

The form of the ceremony of solemnization is not particularly specified. The only requirement is that in the presence of two witnesses the parties shall declare that they take each other to be husband and wife.

#### § 406. FORM OF CEREMONY.

In the solemnization of marriage no particular form is required, except that the parties thereto shall assent

or declare in the presence of the minister, priest, or judicial officer solemnizing the same, and in the presence of at least two attending witnesses, that they take each other to be husband and wife. [7156.]

A general form is as follows:

The justice shall inquire of the man and woman as follows:

Of the man: "Will you have this woman to be your wedded wife, to live together after the ordinance of God, in the holy state of matrimony? Will you love her, comfort, honor and keep her in sickness and in health; and forsaking all others, keep only unto her, so long as you both shall live?"

The man answers: "I will."

Of the woman: "Will you have this man to be your wedded husband, to live together after the ordinance of God, in the holy state of matrimony? Will you love him, comfort him, honor and keep him, in sickness and in health, and forsaking all others, keep you only unto him so long as you both shall live?"

The woman answers: "I will."

Thereupon the justice joins their hands and says: "Forasmuch as you have consented together in holy wedlock and have witnessed the same before God and these witnesses, and have declared the same by joining your hands; therefore, by virtue of the authority in me vested by the state of Washington, I pronounce you husband and wife."

The parties are then entitled to receive a marriage certificate.

#### § 407. THE MARRIAGE CERTIFICATE.

The person solemnizing a marriage shall give to each of the parties thereto, if required, a certificate thereof, specifying therein the names and residence of the parties, and of at least two witnesses present, the time and place of such marriage, and the date of the license thereof, and by whom issued. [7157.]

#### § 408. FORM OF CERTIFICATE.

A person solemnizing a marriage shall within three months thereafter make and deliver to the judge of the superior court (county clerk) of the county where the

marriage took place a certificate containing the particulars specified in the last section, which said certificate may be in the following form:—

State of Washington,  
County of .....

This is to certify that the undersigned, a ..... by authority of a license bearing date the .... day of ....., A. D. 19...., and issued by the county auditor of the county of ....., did, on the .... day of ....., A. D. 19...., at the house of ....., in the county and state aforesaid, join in lawful wedlock A B of the county of ..... of the ....., and C D of the county of ..... of the ..... with their mutual assent, in the presence of F H and E G, witnesses.

Witness my hand. [7158.]

#### § 409. CERTIFICATE TO BE RECORDED.

The judge of the superior court (county clerk) shall file such certificate and record the same in the record of marriages, and the legal fee therefor shall be one dollar, to be paid by the person solemnizing the marriage, who shall be entitled to demand and receive the same from the parties before the marriage. [7159.]

#### § 410. PENALTY FOR FAILURE TO DELIVER CERTIFICATE.

Any person solemnizing a marriage who shall willfully refuse or neglect to make and deliver to the judge of the superior court (county clerk) for record the certificate mentioned in the last section, and pay the fee for recording the same within the time in such section specified, shall be deemed guilty of a misdemeanor, and upon conviction shall pay, for such refusal or neglect, a fine of not less than twenty-five nor more than three hundred dollars. [7160.]

All marriages to which there are no legal impediments are declared valid in the following section:

#### § 411. MARRIAGES, WHEN VALID.

All marriages to which there are no legal impediments, solemnized before or in any religious organization or congregation, according to the established ritual

or form commonly practiced therein, are valid; and a certificate, containing the particulars specified in sections 7157 and 7158, shall be made and filed for record by the person or persons presiding or officiating in or recording the proceedings of such religious organization or congregation, in the manner and with like effect as in ordinary cases. [7161.]

When a person performs a marriage who is not properly authorized, the marriage shall not be void when there is a belief by the parties that they were being lawfully married.

#### **§ 412. SOLEMNIZATION BY UNQUALIFIED PERSON.**

A marriage solemnized before any person professing to be a minister, a priest of any religious denomination in this state, or professing to be an authorized officer thereof, is not void, nor shall the validity thereof be in any way affected on account of any want of power or authority in such person, if such marriage be consummated with a belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. Illegitimate children become legitimate by the subsequent marriage of their parents with each other. [7155.]

When a person is incapable of consenting to a marriage the same is voidable.

#### **§ 413. VOIDABLE MARRIAGES.**

When either party to a marriage shall be incapable of consenting thereto, for want of legal age or a sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage is voidable, but only at the suit of the party laboring under the disability or upon whom the force or fraud is imposed. [7162.]

## CHAPTER XXVIII.

### TRUANT CHILDREN AND COUNTY PRISONERS.

- § 414. Justice of the peace may sentence prisoners to work.
- § 415. County prisoners to be worked.
- § 416. Truant children.
- § 417. Concurrent jurisdiction over truants.

#### § 414. JUSTICE OF THE PEACE MAY SENTENCE PRISONERS TO WORK.

When a person has been sentenced by any justice of the peace in a city in this state for a term of imprisonment in the city jail, whether in default of payment of a fine or otherwise, such person may be compelled on each day of such term, except Sundays, to perform eight hours' labor upon the streets, public buildings, and grounds of such city, and to wear an ordinary ball and chain while performing such labor. [8493.]

#### § 415. COUNTY PRISONERS TO BE WORKED.

When a person has been sentenced, by a justice of the peace, or a judge of the superior court, to a term of imprisonment in the county jail, whether in default of payment of a fine or costs, or otherwise, such person may be compelled to work eight hours each day of such term in and about the county buildings, public roads, streets, and grounds; provided, this section and the last preceding one of this chapter shall not apply to persons committed in default of bail. [8494.]

#### § 416. TRUANT CHILDREN.

The justice of the peace has authority to commit truant children to the superior court for commitment to the reform school.

Any attendance officer, sheriff, deputy sheriff, marshal, policeman, or any other officer authorized to make arrests in the city or district, shall arrest without a warrant a child who, under the provisions of this act (Education) is required to attend school, such child then being a truant from instruction in the school which he or she is lawfully required to attend, shall forthwith

deliver a child so arrested either to the custody of a person in parental relation to the child or to the teacher from whom the child is then a truant, or, in the case of habitual or incorrigible truants, shall bring him or her before a justice of the peace. The justice of the peace shall, if he be convinced that the child so arrested is a habitual truant or that the child is guilty of willful and continued disobedience to the school rules and regulations or laws, or that the conduct of the child is pernicious and injurious to the school, bind the child over to the superior court with a view of his commitment to the state reform school or other school for incorrigibles. [4718.]

#### **§ 417. CONCURRENT JURISDICTION OVER TRUANTS.**

In cases arising under this act all justices' courts, municipal courts and superior courts in the state of Washington shall have concurrent jurisdiction. [4720.]

## CHAPTER XXIX.

## SWINE.

- § 418. Swine may be impounded.
- § 419. Assessment of damages by appraisers.
- § 420. Fees of the justice.
- § 421. Slaughtered animals.
- § 422. Justice to have copy of record.

## § 418. SWINE MAY BE IMPOUNDED.

If any swine shall be found running at large contrary to the provisions of this act, it shall be lawful for any person to restrain the same forthwith and shall immediately give the owner notice in writing that he has restrained said swine, and the amount of damages he claims in the premises, and requiring the owner to take the swine away and pay such damages. If said owner fails to comply with the provisions of this section within three days after receiving such notice, such damages may be recovered in a civil action before any justice of the peace, and such person who sustains damages as aforesaid shall have a lien upon said swine for the damages sustained by the said swine, and for keeping same: Provided, that if the owner of such swine is unknown, the notice required in this act shall be published for two weeks in a newspaper published in the county. [3175.]

## § 419. ASSESSMENT OF DAMAGES BY APPRAISERS.

If the owner of such swine so restrained shall object to the damages claimed by the persons having such swine in possession, and the parties cannot agree upon the same, either party may apply to any justice of the peace in the precinct, and if there be no justice of the peace in the precinct, then the nearest justice in [the] county, for the appointment of appraisers to assess the damages done by such swine, and the reasonable cost of taking up and keeping the same; and it shall be the duty of such justice of the peace to issue notice to three disinterested freeholders of the precinct to appear upon the premises where such swine may be, and assess the damages as herein required. [3176.]

The appraisers then take oath to impartially appraise the damages and they will give a written and signed statement of their appraisal to the parties and upon payment of the said damages the owner may take away his swine, and may have a right for wrongful taking of the property if the holder refuses to surrender the swine. [3177.]

#### § 420. FEES OF THE JUSTICE.

The justice of the peace shall be allowed a fee of fifty cents for issuing the notice and swearing the appraisers, and the constable or person serving the notice shall be allowed a fee of one dollar, which fee shall be paid by the owner of such swine before he shall be entitled to take them away. Or if such owner fails to pay such fees, the person having such swine shall pay the same, and may add the same to the damages allowed him in the premises. [3178.]

#### § 421. SLAUGHTERED ANIMALS.

From and after the passage of this act it shall be the duty of all butchers engaged in the business of slaughtering cattle in this state to keep a true and correct report of all marks and brands of all cattle slaughtered by them, recording also the name or names of persons from whom said cattle were bought, together with their residence and date of purchase and delivery of said cattle. The said record shall be kept in a suitable book in the butcher's place of business, subject at all times to the inspection of the public. [3146.]

#### § 422. JUSTICE TO HAVE COPY OF RECORD.

It shall be the duty of all butchers keeping a record as provided in the last preceding section to make or cause to be made on or before the first day of each month two exact and correct copies of the said record as kept by him or them, and shall be and appear before the nearest acting justice of the peace within the county in which said butcher carries on and conducts his business, and shall make affidavit to the correctness of the said record, one copy of which shall be placed and kept on file in the office of the said justice of the peace and the other copy shall be sent by the said butcher to the county auditor of the county and be placed and kept on file by the said auditor, and be subject as other papers in his office to the inspection of the public. [3147.]

## CHAPTER XXX.

## SEAGULLS.

§ 423. Penalty.

§ 424. Justice's power to punish.

§ 425. Actions in favor of towns.

It shall be unlawful for any person in this state, or upon or about any of the waters or shores of this state, to take, injure, or kill, or endeavor to take, injure, or kill, any seagull of any kind or species. [5342.]

§ 423. PENALTY.

Any person violating any of the provisions of the last section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine of not less than five nor more than twenty-five dollars, and in default of payment of the fine imposed shall be imprisoned in the county jail for the period of one day for each two dollars of the fine so imposed. [5343.]

§ 424. JUSTICE'S POWER TO PUNISH.

Police justices or other magistrates of incorporated cities or towns, and justices of the peace (not excluding the jurisdiction of other courts), shall have jurisdiction over all proceedings under the last two sections. [5344.]

§ 425. ACTIONS IN FAVOR OF TOWNS.

No action in favor of any town shall be brought before any justice of the peace residing in such town. [9420.]

## CHAPTER XXXI.

## CONSTABLES.

- § 426. His duties and authority.
- § 427. Relative to unclaimed property or lost money and goods.
- § 428. Constable's sale of unclaimed property.
- § 429. Return of sale.
- § 430. The constable's election.
- § 431. In cities of five thousand population.
- § 432. The constable's salary.
- § 433. The constable's oath.
- § 434. The constable's bond.
- § 435. Appointment to vacant office.
- § 436. Schedule of fees.
- § 437. Incomplete business to successor.

The constable is an officer, duly elected, whose business it is to obey the judicial orders of justices, judges, coroners, and perform the various services required of his office by law.

**§ 426. HIS DUTIES AND AUTHORITY.****As to Service of Writ, Process or Order:**

Any constable may within his county serve any writ, process or order, lawfully directed to him by a justice of the peace, superior judge, or coroner, and generally do and perform all acts, by law required of constables. [6529.]

**As to Violations of the Criminal Law:**

It shall be the duty of all constables, and all sheriffs, to make complaint of all violations of the criminal law, which shall come to their knowledge, within their respective jurisdictions. [4004.]

**Authority in Attachment:**

The word sheriff as used in this act (Attachment) is meant to apply to constables, when the proceedings are in a justice court, and when the proceedings are in a justice's court, the justice is to be regarded as the clerk of the court for all purposes herein contemplated: Provided, that nothing contained in this act shall be con-

strued to confer upon a justice of the peace power to issue a writ of attachment to be served out of the county in which such justice shall have his office, or to confer upon a sheriff, constable or other officer, power or authority to serve a writ of attachment issued out of justice's court beyond the limits of the county in which such justice shall have his office, except in cases provided for in section 12 of this act: And, provided further, that nothing contained in this act shall be construed or held to authorize the attachment of real estate, or any interest therein, under a writ of attachment issued out of any justice's court. [679.]

#### Process of Military Courts:

The president of any court-martial or delinquency court may designate any sheriff or constable to execute the process and orders of the court; and the sheriff or constable so designated shall, when required, not only perform the usual duties as such officers, but shall also execute any process, mandate or order lawfully issued by such president or court, and perform all acts and duties by this act imposed or authorized to be performed by any sheriff or constable. Any sheriff or constable who refuses to execute the lawful process or orders of such court shall forfeit his office and may be fined not exceeding one thousand dollars. He may be prosecuted in any court of competent jurisdiction, by the judge advocate-general or any officer of his department.

#### § 427. RELATIVE TO UNCLAIMED PROPERTY OR LOST MONEY AND GOODS.

The law defines the duties of justices and constables in the matter of recovering and placing or disposing of goods or money lost. When the justice has received an affidavit of unclaimed property according to law, he shall examine such property and then direct that the same be sold.

Upon the delivery to him of such affidavit (finder's affidavit) the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order, under his hand, that the property therein described be sold by any constable of the precinct where the same shall be, at public auction. [7132.]

### § 423. CONSTABLE'S SALE OF UNCLAIMED PROPERTY.

When he has received the order of the justice to sell the unclaimed property, the constable proceeds as follows:

It shall be the duty of such constable receiving such inventory and order, to give ten days' notice of the sale by posting up written notices thereof in three or more places in such precinct, and to sell such property at public auction, to the highest bidder, in the same manner as provided by law for sales under execution from justices' courts. [7133.]

### § 429. RETURN OF SALE.

Upon completing the sale, the constable making the same shall indorse upon the order aforesaid, a return of his proceedings thereon, and return the same to the justice, together with the inventory, and the proceeds of sale, after deducting his fees. [7134.]

### § 430. THE CONSTABLE'S ELECTION.

As we have said, the constable is an officer elected by the people in the same manner as other elective officers, his election to be conducted in the same general way as an election of justice of the peace.

The election of constables shall be conducted, and the return of such election made, and certificates of election issued in the same manner as in elections of justice of the peace. [6526.]

### § 431. IN CITIES OF FIVE THOUSAND POPULATION.

There shall be elected at the general election to be held in November, 1898, and biennially thereafter in cities of more than five thousand inhabitants, only one justice of the peace and one constable and no more. [6532.]

[For elections, see justice's election, sections 6531-6534, 6537, Rem. & Bal.]

### § 432. THE CONSTABLE'S SALARY.

[See justice's salary, sections 6535-6539, Rem. & Bal.]

**§ 433. THE CONSTABLE'S OATH.**

Like all other officers, the constable is required to make his oath to properly discharge the duties of his office.

Every person elected or appointed a constable shall, within twenty days after receiving his certificate of election, take an oath, before any person authorized to administer oaths, that he will support the constitution of the United States and the laws of this state, and faithfully discharge and perform the duties of his office as constable, according to the best of his ability. Such oath shall be indorsed on the back of the certificate of election or appointment, and filed, together with the certificate, in the office of the auditor of the proper county. [6527.]

**§ 434. THE CONSTABLE'S BOND.**

The constable must also enter into bond for the proper performance of his duties.

Every person elected or appointed to the office of constable shall, within the time prescribed for filing his oath of office, enter into a bond to the proper county, with two or more sureties, residents of the county, in the sum of one thousand dollars, conditioned that he will execute all process to him directed and delivered, and pay over all moneys received by him by virtue of his office, and in every respect discharge all the duties of constable according to law. The auditor shall indorse thereon his approval of the sureties therein named. [6528.]

**§ 435. APPOINTMENT TO VACANT OFFICE.**

Vacancies before election in the office of constable are filled by appointments of the county commissioners.

All vacancies existing in the offices of constable whether happening by death, resignation, failure to elect, or otherwise, may be filled by appointment by the board of commissioners of the proper county; and every person so appointed shall hold his office until the next election. [6525.]

# § 436. SCHEDULE OF FEES.

For serving an arrest warrant in a criminal action, or making an arrest in cases where an arrest may be lawfully made without a warrant, besides mileage.....\$2.00 -

[6530.]

For other services he shall receive the same fees and mileage as is paid to a sheriff for like services.

Below is a list of the sheriff's fees:

For service of each summons and complaint, and return thereon on each defendant, besides mileage.....	.60
For making a return of not found in the county upon a summons besides mileage, actually traveled.....	.30
For levying each writ of attachment or writ of execution upon real or personal property, besides mileage.....	.60
For serving writ of possession or restitution without aid of the county, besides mileage.....	1.50
For serving writ of possession or restitution with aid of the county, besides mileage.....	2.00
For service and return of subpoena, upon each person served besides mileage.....	.25
For summoning each juror, in a justice of the peace court, besides mileage.....	.25
For serving an arrest warrant in a civil action or proceeding, besides mileage.....	.80
For serving or executing any other writ or process in a civil action or proceeding, besides mileage.....	.60
For taking and approving any bond, in a civil action or proceeding, required by law to be taken or approved by him, except indemnity bonds..	.50
For posting each notice, besides mileage.....	.25
For each mile actually and necessarily traveled by him in going to or returning from any place of service.....	.10
For making a deed to land sold upon execution or order of sale, or other decree of court, to be paid by the purchaser.....	3.00
For making copy of any complaint, notice, writ or process, necessary to complete service, per folio ten cents: Provided, that he shall not be required to make any certified copies for a fee of less than.....	1.00

[497.]

**§ 437. INCOMPLETE BUSINESS TO SUCCESSOR.**

All unfinished business in the constable's hands at the expiration of his term of office shall be turned over to his successor in the manner following:

All sheriffs, constables, and coroners in the state of Washington, upon the completion of their term of office and the qualification of their successors, shall deliver and turn over to such successors all writs and other processes in their possession not wholly executed, and all personal property in their possession or under their control held under such writs or processes, and take receipts therefor in duplicate, one of which shall be filed in the office from which such writ or process issued as a paper in the action, which receipt shall be a good and sufficient discharge to such officer of and from further charge of the execution of such writs and processes; and shall also deliver to their successors all papers and property in their possession or under their control as such officers. And it shall be the duty of such successors to execute or complete the execution of all such writs and processes so delivered to them, and to furnish and complete any and all business pertaining to such offices so turned over to them. [4005.]



# GENERAL STATUTES.

## CHAPTER I.

### BILLS OF SALE.

§ 438. Bill of sale to be recorded or possession taken.

§ 439. Certain contracts to be in writing.

§ 440. Affidavit of vendor for stock of goods.

§ 441. Sale of goods void—When.

In order to insure that the transfers of personal property shall be made with as little friction and trouble as possible, a series of statutes have grown up around this part of our commercial activities by which the law pronounces what is a good sale and what is not.

No contract for the sale of any goods, wares or merchandise, for the price of fifty dollars or more, shall be good and valid, unless the purchaser shall accept and receive part of the goods so sold, or shall give something in earnest to bind the bargain, or in part payment, or unless some note or memorandum in writing be made and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized. [5290.]

It will be noticed from this that one of three things must be done to make a contract of sale for goods of the value of fifty dollars or more binding: 1. There must be a delivery and acceptance of part of the goods sold; 2. Or there must be some money paid to "bind the bargain"; or 3. A memorandum of the sale must be made in writing. Where either one of these conditions is complied with, the chance of dispute is reduced to a minimum.

The vendee must record the bill of sale within ten days in the county auditor's office. If this is not done, and the property is left in the possession of the vendor, the sale is not good against the creditors or innocent purchaser.

**§ 438. BILL OF SALE TO BE RECORDED OR POSSESSION TAKEN.**

No bill of sale for the transfer of personal property shall be valid, as against existing creditors, or innocent purchasers, where the property is left in the possession of the vendor, unless the said bill of sale be recorded in the auditor's office of the county in which the property is situated, within ten days after such sale shall be made. [5291.]

It will be noticed from this that the recording of the bill of sale should be made in the county auditor's office where the property is situated.

**§ 439. CERTAIN CONTRACTS TO BE IN WRITING.**

The following is a list of the contracts which the law requires to be in writing and signed by the party who may be charged with the performance of the contract:

In the following cases, specified in this section, any agreement, contract or promise, shall be void unless such agreement, contract or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized, that is to say:

1. Every agreement that by its terms is not to be performed in one year from the making thereof;

2. Every special promise to answer for the debt, default, or misdoings of another person;

3. Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry;

4. Every special promise made by an executor or administrator to answer damages out of his own estate;

5. An agreement authorizing or employing an agent or broker to sell or purchase real estate for compensation or a commission.

**§ 440. AFFIDAVIT OF VENDOR FOR STOCK OF GOODS.**

The law requires that when one buys a stock of goods in bulk, as, for instance, the purchase of the contents of a grocery store, he must, before he pays anything for the

stock, require from the seller a sworn statement of all the creditors of the seller, their names and addresses, and the amount which he owes to each of the said creditors.

It shall be the duty of every person who shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, for cash, or on credit, before paying to the vendor, or his agent, or representative, or delivering to the vendor or his agent, any part of the purchase price thereof, or any promissory note, or other evidence therefor, to demand of and receive from such vendor, or agent, or if the vendor or agent be a corporation, then from the president, vice-president, secretary or managing agent of such corporation, a written statement, sworn to substantially as hereinafter provided, of the names and addresses of all the creditors of said vendor, to whom said vendor may be indebted, together with the amount of the indebtedness due or owing, and to become due or owing, by said vendor to each of such creditors; and it shall be the duty of said vendor, or agent, to furnish such statement, which shall be verified by an oath to the following effect:

#### FORM OF VENDOR'S AFFIDAVIT.

State of Washington,  
County .....,—ss.

Before me personally appeared ..... [vendor or agent, as the case may be] who being by me first duly sworn upon his oath doth depose and say that the foregoing statement contains the names of all the creditors of ..... [the name of the vendor] together with their addresses, and that the amount set opposite each of said respective names is the amount now due and owing, and which shall become due and owing by ..... [vendor] to such creditors, and that there are no creditors holding claims due, or which shall become due for or on account of goods, wares or merchandise purchased upon credit or on account of money borrowed to carry on the business of which said goods are a part, other than as set forth in said statement, and in this affidavit, are within the personal knowledge of affiant.

Subscribed and sworn to before me this .... day of ....., 19.....

[Title of officer taking oath.] [5296.]

**§ 441. SALE OF GOODS VOID—WHEN.**

The breach of the foregoing statute, in so far as it leaves the creditor without protection, is void:

Whenever any person shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, for cash, or on credit, and shall pay any part of the purchase price, or execute or deliver to the vendor thereof, or to his order, or to any person for his use, any promissory note, or other evidence of indebtedness for said purchase price, or any part thereof, without first having demanded and received from said vendor, or from his agent, the statement provided for in section 1 (above) [440] of this act and verified as there provided, and without paying or seeing to it that the purchase money of the said property, is applied to the bona fide claim of the creditors of the vendor as shown upon such verified statement, share and share alike, such sale, or transfer shall be fraudulent and void. [5297.]

## CHAPTER II.

## THE LAW OF WILLS AND DESCENT OF PROPERTY.

- § 442. There must be two witnesses.
- § 443. When witness is beneficiary.
- § 444. Devise of land.
- § 445. Signing testator's name for him.
- § 446. When will is revoked.
- § 447. Construction.
- § 448. Real property.
- § 449. When the real estate does not descend by devise.
- § 450. Surviving spouse and child.
- § 451. Surviving spouse and parents.
- § 452. Surviving brothers and sisters.
- § 453. Surviving spouse and no issue nor near blood.
- § 454. Next of kin.
- § 455. Deceased child's estate shared by survivors.
- § 456. Issue of same parent.
- § 457. When estate goes to the state.
- § 458. The inheritance by illegitimate children.
- § 459. How personal property is distributed.

The justice of the peace, whether he be a lawyer or not, is generally credited with some knowledge of the rudiments of legal affairs, and is frequently called upon to perform legal services to his neighbors which are entirely aside from his judicial capacity. Not the least frequent of such services is that of drawing wills. When one considers that a will is often drawn in an emergency, often when the testator is lying halfway between this world and the next, it is plainly the duty not only of the justice of the peace, but also of any man who can read and write, to know how to act at such a crisis. To many people, making the will is like putting on the burial shroud; they avoid it until the grip of sickness reminds them that they are mortal like anybody else. Then there is not time to find a lawyer; yet, when considerable property rights are involved, the best interests of all require that a will be made.

There is really nothing mysterious about drawing a will. A very simple statement of the testator's wishes is sufficient,

provided the will is properly attested and that it appears that the testator was of sound mind when he executed it.

#### **§ 442. THERE MUST BE TWO WITNESSES.**

The signature of the testator must be witnessed by two competent persons. By competent persons is meant those who are qualified to come into court and give proper testimony concerning the state of the testator's mind at the time he made the will, competent to hear the will read and understand it, and able to swear that the signature is the signature of the testator. The testator making the will signs his name in the presence of the witnesses and the witnesses sign theirs.

#### **§ 443. WHEN WITNESS IS BENEFICIARY.**

Suppose one of the witnesses is to receive some legacy under the will. In that case, the legacy to such witness is void unless there are two other competent witnesses to the will. The purpose of the law is to get two disinterested witnesses, who shall have no motive in testifying to the genuineness of the signature and will.

#### **§ 444. DEVISE OF LAND.**

When the testator devises his land it shall be held to convey all of the estate of the devisor in the said land. It is as if he had given a deed to the devisee or the person inheriting the same. But if the testator wishes to give any estate to another person for the rest of that person's life, the devisee only holds for life, and at his death the property reverts to the heirs at law of the testator. If the testator wishes to let the property go to the heirs of the person to whom he gives the life estate, he must specially devise the remainder, as it is called, to such heirs. Otherwise, as we have seen, the property reverts to the lawful heirs of the man making the will.

#### **§ 445. SIGNING TESTATOR'S NAME FOR HIM.**

Often, when a man is in the last extreme of weakness and sickness, his mind may be clear enough to order the disposal

of his real and personal property after death, but he himself may be too weak to make the effort necessary to write his name at the conclusion of the will. Another person thereto may thereupon sign the testator's name for him, but the person so signing the will must subscribe himself as a witness to the said will, and state that he signed the testator's name at the request of the said testator.

#### § 446. WHEN WILL IS REVOKED.

No written will is considered revoked until there is a later will in writing, or unless the testator shall direct that the first will be burned, destroyed and obliterated. Marriage, however, will operate to revoke a will when it appears that the wife has been deprived in the will of her marital rights in the husband's property. If provision has been made for her by marriage settlement, or if she is provided for in the will, or so mentioned therein as to show that the testator had intended to make no such provision, the will will not therefore be considered automatically revoked. In a state like Washington, where the wife enjoys a community interest in the property of her husband, it is of the first importance that she should be particularly mentioned in the will and not ignored.

#### § 447. CONSTRUCTION.

The courts, when the will is probated, seek to determine the real intention of the testator, and for this reason will give every reasonable construction to the provisions. Yet much difficulty will be avoided if the draftsman will state the testator's wishes in plain, clear and careful language and not lose himself and his ideas in a maze of legal rigmarole.

#### § 448. REAL PROPERTY.

A clear understanding of the laws of descent are useful to all men, and particularly to those who perform the peculiar duties of a justice of the peace. Not because they are attached inherently to that office, for, as a matter of fact, the justice of the peace has no jurisdiction over matters of wills and real estate; that is all within the particular

sphere of the superior court in probate. Yet, as we have seen, the justice, especially in rural parts, is usually the guide, philosopher and friend of the community, and a word of advice and information on a matter of so important a character to all property holders as the future disposition of their property at death will often prove invaluable to such persons in making up their minds what they wish done with the property.

#### **§ 449. WHEN THE REAL ESTATE DOES NOT DESCEND BY DEVISE.**

The following is the law governing the disposal of real property when the deceased owner has not devised the same. It will be noticed that the distribution is subject to the payment first of the debts of the decedent.

#### **§ 450. SURVIVING SPOUSE AND CHILD.**

If the decedent leaves a surviving husband or wife and only one child, or the lawful issue of one child, the estate goes in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one child living and the lawful issue of one or more deceased children, one-third goes to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child by right of representation. If there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally; otherwise they take according to the right of representation.

#### **§ 451. SURVIVING SPOUSE AND PARENTS.**

If the decedent leaves no issue, the estate goes in equal shares to the surviving husband or wife, and to the decedent's father and mother, if both survive. If there be no father or mother, then one-half goes in equal shares to the brothers and sisters of the decedent and to the children of any deceased brothers or sisters, by right of representa-

tion. If decedent leaves no issue, nor husband, nor wife, the estate must go to his father and mother.

#### **§ 452. SURVIVING BROTHERS AND SISTERS.**

If there be no issue, nor husband, nor wife, nor father and mother, nor either, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister by right of representation.

#### **§ 453. SURVIVING SPOUSE AND NO ISSUE NOR NEAR BLOOD.**

If the decedent leaves a surviving husband or wife and no issue, and no father nor mother, nor brother, nor sister, the whole estate goes to the surviving husband or wife.

#### **§ 454. NEXT OF KIN.**

If the decedent leaves no issue, nor husband, nor wife, and no father nor mother, nor brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor must be preferred to those claiming through an ancestor more remote, however.

#### **§ 455. DECEASED CHILD'S ESTATE SHARED BY SURVIVORS.**

If the decedent leaves several children, or one child and the issue of one or more other children, and any such surviving child dies under age and not having been married, all the estate that comes to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent and to the issue of any of such other children who are dead, by right of representation.

#### **§ 456. ISSUE OF SAME PARENT.**

If at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent

and if all the issue are in the same degree of kindred to the child, they share the estate equally; otherwise they take according to the right of representation.

#### **§ 457. WHEN ESTATE GOES TO THE STATE.**

If the decedent leaves no husband, wife or kindred, the estate escheats to the state, for the support of common schools, in the county in which the decedent resided during lifetime or where the estate may be situated. [1341.]

#### **§ 458. THE INHERITANCE BY ILLEGITIMATE CHILDREN.**

One of the most advanced and humane provisions of the law is that which provides for the rights of illegitimate children. From being outcasts and lying under many civil disabilities, to-day justice measures to them a portion with the children begotten in lawful wedlock. For the prevention of fraud, however, certain rules are necessary. The father, in the presence of a competent witness, shall acknowledge himself to be the father of the child. In all cases the child is considered the heir of his mother. But for the child to claim any part of the estate which the father or mother's kindred may have left, as the lineal representative of his father, as set forth in the statute governing children born in lawful marriage, the parents must have intermarried and the child adopted into the family.

#### **§ 459. HOW PERSONAL PROPERTY IS DISTRIBUTED.**

When any person shall die possessed of any separate personal estate or of any right or interest therein not lawfully disposed of by his last will, the same shall be applied and distributed as follows:

1. The widow, if any, shall be allowed all articles of her apparel or ornament, according to the degree and estate of her husband, and such provisions and other necessities for the use of herself and family under her care, as shall be allowed and ordered in pursuance of the provisions of any law; and this allowance shall be made as well when the widow receives the provision

made for her in the will of her husband as when he dies intestate.

2. The personal estate remaining after such allowance shall be applied to the payment of the debts of the deceased, with the charges for the funeral and the settling of the estate.

3. The residue, if any, of the personal estate, shall be distributed among the same persons as would be entitled to the real estate by this act, and in the same proportion as provided, excepting as herein further provided.

4. If the intestate leave a husband and issue, the husband shall be entitled to one-half the residue.

5. If there be no issue, the husband shall be entitled to the whole of the residue.

6. If the intestate leave a widow and issue, the widow shall be entitled to one-half of said residue.

7. If there be no issue the widow shall be entitled to the whole of the residue.

8. If there be no husband, widow or kindred of the intestate, the said personal estate shall escheat to the state, for the use of common schools in the particular county in which the intestate shall have resided at time of death. [1364.]

## CHAPTER III.

### COMMUNITY PROPERTY.

- § 460. The husband's separate property.
- § 461. The wife's separate property.
- § 462. What is community property.
- § 463. The husband to manage real property.

This is one branch of the law in which the justice should have some particular knowledge, for the reason that many of the decisions which he will be called upon to render will affect the property of both the husband and the wife, and will often be a judgment against the joint property.

#### § 460. THE HUSBAND'S SEPARATE PROPERTY.

Property and pecuniary rights owned by the husband before marriage, and that acquired by him afterwards by gift, bequest, devise or descent, with the rents, issues, and profits thereof, shall not be subject to the debts or contracts of his wife, and he may manage, lease, sell, convey, encumber, or devise, by will, such property without the wife joining in such management, alienation, or encumbrance, as fully and to the same effect as though he were unmarried. [5915.]

#### § 461. THE WIFE'S SEPARATE PROPERTY.

The property and pecuniary rights of every married woman at the time of her marriage, or afterwards by gift, devise, or inheritance, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of her husband, and she may manage, lease, sell, convey, encumber or devise by will such property, to the same extent and in the same manner that her husband can property belonging to him. [5916.]

#### § 462. WHAT IS COMMUNITY PROPERTY.

Property, not acquired or owned as prescribed in the next two preceding sections, acquired after marriage by either husband or wife, or both, is community property. The husband shall have the management and control of community personal property, with a like power of disposition as he has of his separate personal property, except that he shall not devise by will more than one-half thereof. [5917.]

### § 463. THE HUSBAND TO MANAGE REAL PROPERTY.

The husband has the management and control of the community real property, but he shall not sell, convey, or encumber the community real estate, unless the wife join with him in executing the deed or other instrument of conveyance by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument of conveyance must be acknowledged by him and his wife: Provided, however, that all such community real estate shall be subject to the liens of mechanics and others for labor and materials furnished in erecting structures and improvements thereon as provided by law in other cases, to liens of judgments recovered for community debts, and to sale on execution issued thereon. [5918.]

It will be noted from the above statutes that the husband in the case both of the real and personal property is given the management and control thereof, subject to divers restrictions which are designed to protect the community rights of the wife.

The property which either spouse is possessed of before entering into the marriage is the separate property over which he or she has control without the interference of the other. To this class belong also the properties which may fall to either spouse through inheritance, as by gift, descent, devise or bequest.

In drafting deeds and other instruments affecting the property of married persons, it is important to ascertain when and how the property was acquired and, as will be seen from the above, when it appears that the property is such as both spouses have equal rights in it, both must join in signing and acknowledging all such instruments. Where the wife is absent, or the husband, as the case may be, or unable to be present to acknowledge a deed, it is the procedure for the absent spouse to appoint the other his or her attorney in fact, granting a power of attorney to sign his or her name, and such signature is made for the absent spouse by signing the name and then beneath it, "By . . . . ., her attorney in fact."

## CHAPTER IV.

### CONCERNING DEEDS.

- § 464. The grantor.
- § 465. The grantee.
- § 466. The warranty deed.
- § 467. Consideration.
- § 468. The quitclaim deed.
- § 469. The bargain and sale deed.
- § 470. The form of acknowledgment.
- § 471. Conveyances by and between husband and wife.
- § 472. The mortgage.
- § 473. The satisfaction of mortgages.
- § 474. Penalty for failing to satisfy mortgage.

A deed is a conveyance in writing of real estate or any interest therein, signed by the party bound by the same, and acknowledged before some person authorized by law to take the acknowledgment of deeds; a notary public, as a general thing.

Title to real estate is not conveyed by word of mouth. In fact, the practice of conveying estate in real property has become much more precise and particular as time has gone on; although the wording of the instrument itself is much more simple than under some of the older laws of England. In that country they swung from the extreme simplicity of conveying by plucking a twig or piece of sod from the ground to the extreme complexity of a blanket-sized sheepskin full of all sorts of averments. The idea has persisted, however, of conveying by deed, and the law of this state specifically requires that such conveyance be made by a written instrument executed as above set forth.

#### § 464. THE GRANTOR

Is the person who is making the deed—that is, conveying title to the property.

#### § 465. THE GRANTEE

Is the person to whom title to the property is conveyed. When the grantors are husband and wife it is proper

to say, "Napoleon Wing and Josephine Wing, his wife." When the grantor is a single man, it simplifies the record to allege that the grantor is "Wellesley Wellington, a bachelor," and in the case of an unmarried woman, "Sophia Sapho, a spinster." The observance of this precaution will do away with the necessity of subsequent purchasers of the property having to secure affidavits as to the domestic status of the parties.

#### § 466. THE WARRANTY DEED.

This, in simple language, is a deed in which the grantor warrants that the title is in him and that he can lawfully convey the same; in the words of the statute, that he has an "indefeasible estate in fee simple" in the premises. Here is the statute with the statutory form:

Warranty deeds for the conveyance of land may be substantially in the following form:

The grantor [here insert the name or names and place of residence] for and in consideration of [here insert consideration] in hand paid, convey and warrant to [here insert the grantee's name or names] the following described real estate [here insert description] situated in the county of ....., state of Washington.

Dated this .... day of ....., 19.....

.....

[Don't forget the acknowledgment.]

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantor:—

1. That at the time of making and delivery of such deed he was lawfully seised of an indefeasible estate in fee simple in and to the premises therein described, and had good right and full power to convey the same;

2. That the same were then free from all encumbrances;

3. That he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same; and such covenants shall be obligatory upon any grantor, his heirs

and personal representatives, as fully and with like effect as if written at full length in such deed. [8747.]

### § 467. CONSIDERATION

Means generally the value which the grantor receives for the property. It may be symbolical, as "one dollar," or it may state the full purchase price of the land.

### § 468. THE QUITCLAIM DEED.

This deed is often given by a grantor having some interest in the estate and whose removal from the record is necessary to clear the title.

Quitclaim deeds may be in substance in the following form:

The grantor [here insert name or names and place of residence] for the consideration [here insert the consideration] convey and quitclaim to [here insert grantee's name or names] all interest in the following described real estate [here insert description] situated in the county of ....., state of Washington.

Dated this .... day of ....., 19.....

.....

Every deed in substance in form as prescribed in this section, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his heirs and assigns, in fee of all the then existing legal or equitable rights of the grantor in the premises therein described, but shall not extend to the after-acquired title unless words are added expressing such intention. [8749.]

### § 469. THE BARGAIN AND SALE DEED.

Bargain and sale deeds for the conveyance of land may be substantially in the following form:

The grantor [name or names and residence] for [and] in consideration of [here insert consideration] in hand paid, bargain, sell, and convey to [here insert the grantee's name or names] the following described real estate [here insert description] situated in the county of ....., state of Washington.

Dated this .... day of ....., 19.....

.....

Every deed in substance in the above form shall convey to the grantee, his heirs or other legal representatives, an estate of inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his heirs or other legal representatives, to wit, that any grantor was seised of an indefeasible estate in fee simple, free from encumbrance, done or suffered from the grantor, except the rents and services that may be reserved, as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs, executors, administrators and assigns, may, in any action, recover for breaches, as if such covenants were expressly inserted. [8748.]

It was the old custom to seal all such instruments with the seals of the parties, but this formality has been expressly abolished by law.

The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments, and contracts in writing, is hereby abolished, and the addition of a private seal to any such instrument or contract in writing, hereafter made, shall not affect its validity or legality in any respect. [8751.]

It is not necessary that a deed should be witnessed in this state.

#### § 470. THE FORM OF ACKNOWLEDGMENT.

A certificate of acknowledgment substantially in the following form shall be sufficient:

State of Washington,  
County of .....,—ss.

I [here give name of officer and official title], do hereby certify that on this .... day of ....., 19...., personally appeared before me [name of grantor, and if acknowledged by wife, her name and add "his wife"] to me known to be the individual or individuals described in and who executed the within instrument, and acknowledged that he [she or they] signed and sealed the same as his [her or their] free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this .... day of ....., A. D. 19....

[Signature of officer.]

### § 471. CONVEYANCES BY AND BETWEEN HUSBAND AND WIFE.

The husband and wife may convey his or her community right to the other without prejudice to the existing equity of creditors in and to the property. The form of the conveyance does not recite the married state, but is simply, "Timothy Twig" to "Annie Twig," and the same is acknowledged as by a single person.

The separate estate of either husband or wife may be conveyed by the one or other through power of attorney to either, providing the same is properly acknowledged and certified according to law. In the same manner, the community estate may be conveyed through power of attorney to either.

A husband may make and execute a letter of attorney to wife, or the wife may make and execute a letter of attorney to the husband, authorizing the sale or other disposition of his or her community interest or estate in the community property, and as such attorney in fact, to sign the name of such husband or wife to any deed, conveyance, mortgage, lease or other encumbrance, or to any instrument necessary to be executed by which the property conveyed or transferred shall be released from any claim as community property. And either said husband or said wife may make and execute a letter of attorney to any third person to join with the other in the conveyance of any interest either in separate real estate of either, or in the community estate held by such husband or wife in any real property. And both husband and wife owning community property may jointly execute a power of attorney to a third person authorizing the sale, encumbrance, or other disposition of community real property, and so execute the necessary conveyance or transfer of said real estate. [8769.]

### § 472. THE MORTGAGE.

A mortgage is an instrument whereby one secures the payment of money on any lawful agreement or condition.

Mortgages of land may be in the following form, substantially:

The mortgagor [here insert name or names] mortgages to [here insert name or names of mortgagee or

mortgagees] to secure the payment of [here recite the nature and amount of indebtedness, showing when due, rate of interest, and whether secured by note or not], the following described real estate [here insert description] situated in the county of ....., state of Washington.

Dated this .... day of ....., 19.....

.....

Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient conveyance and mortgage to secure the payment of money therein specified. The parties may insert in such mortgage any lawful agreement or condition. [8750.]

### § 473. THE SATISFACTION OF MORTGAGES.

When the amount due on a mortgage is paid, the same is said to be satisfied, and the satisfaction is noted on the margin of the mortgage record, or by an instrument in writing.

Whenever the amount due on any mortgage is paid, the mortgagee, his legal representatives or assigns, shall, at the request of any person interested in the property mortgaged, acknowledge satisfaction of the same on the margin of the page upon which the mortgage is recorded (which marginal satisfaction shall be at the time attested by the auditor or his deputy), or by executing an instrument in writing referring to the mortgage by the volume and page of the record, or otherwise sufficiently describing it and acknowledging satisfaction in full thereof. Said instrument shall be duly acknowledged, and upon request shall be recorded in the county wherein the mortgaged property is situated. Every instrument of writing heretofore recorded and purporting to be a satisfaction of mortgage, which sufficiently describes the mortgage which it purports to satisfy so that the same may be readily identified, and which has been duly acknowledged before an officer authorized by law to take acknowledgments or oaths, is hereby declared legal and valid, and a certified copy of the record thereof is hereby constituted prima facie evidence of such satisfaction. [8798.]

**§ 474. PENALTY FOR FAILING TO SATISFY MORTGAGE.**

If the mortgagee shall fail so to do after sixty days from the date of such request or demand, he shall forfeit and pay to the mortgagor the sum of twenty-five dollars, to be recovered in any court having competent jurisdiction, and said court, when convinced that said mortgage has been fully satisfied, shall issue an order in writing, directing the auditor to cancel said mortgage, and the auditor shall immediately record the order and cancel the mortgage as directed by the court, upon the margin of the page upon which the mortgage is recorded, making reference thereupon to the order of the court and to the page where the order is recorded. [8799.]

## CHAPTER V.

### CONCERNING LEASES.

- § 475. The monthly tenant.
- § 476. Tenant by sufferance.
- § 477. Tenancy at specified time.
- § 478. Year to year tenancy.

#### § 475. THE MONTHLY TENANT.

When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of thirty days or more, preceding the end of any of said months or periods, given by either party to the other. [8803.]

#### § 476. TENANT BY SUFFERANCE.

Whenever any person obtains possession of premises without the consent of the owner or other person having the right to give said possession, he shall be deemed a tenant by sufferance merely, and shall be liable to pay reasonable rent for the actual time he occupied the premises, and shall forthwith on demand surrender his said possession to the owner or person who had the right of possession before said entry, and all his right to possession of said premises shall terminate immediately upon said demand. [8805.]

#### § 477. TENANCY AT SPECIFIED TIME.

In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time. [8804.]

#### § 478. YEAR TO YEAR TENANCY.

Tenancies from year to year are hereby abolished, except when the same are created by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses, or seals. [8802.]

## CHAPTER VI.

### CHATTEL MORTGAGES OR MORTGAGES OF PERSONAL PROPERTY.

- § 479. Personal property may be mortgaged.
- § 480. Must be made under affidavit.
- § 481. Mortgage must be recorded.
- § 482. A mixed mortgage on personal and real property.
- § 483. Unlawful removal of mortgaged property.

#### § 479. PERSONAL PROPERTY MAY BE MORTGAGED.

Mortgages may be made upon all kinds of personal property, and upon the rolling stock of a railroad company, and upon all kinds of machinery, and upon boats and vessels, and on growing crops, and on portable mills and such like property. [3659.]

#### § 480. MUST BE MADE UNDER AFFIDAVIT.

A mortgage of personal property is void against creditors of the mortgagor or subsequent purchasers, and encumbrancers of the property for value and in good faith, unless it is accompanied by the affidavit of the mortgagor that it is made in good faith, and without any design to hinder, delay or defraud creditors, and it is acknowledged and recorded in the same manner as is required by law in conveyance of real property. [3660.]

#### § 481. MORTGAGE MUST BE RECORDED.

A mortgage of personal property must be recorded in the office of the county auditor of the county in which the mortgaged property is situated, in a book kept exclusively for that purpose. When personal property mortgaged is thereafter removed from the county in which it is situated, it is, except as between the parties to the mortgage, exempt from the operation thereof, unless either:

1. The mortgagee within thirty days after such removal causes the mortgage to be recorded in the county to which the property has been removed; or
2. The mortgage be recorded in the custom-house; or

3. The mortgagee within thirty days after such removal take possession of the property: Provided, that a mortgage on any vessel or boat or part of a vessel or boat, over twenty tons burden, shall be recorded in the office of the collector of customs, where such vessel is registered, enrolled, or licensed, and need not be recorded elsewhere. [3668.]

#### § 482. A MIXED MORTGAGE ON PERSONAL AND REAL PROPERTY.

Any mortgage upon property of a mixed character, consisting in part of real estate and in part of personal property, and particularly upon railroad property, in the state of Washington, shall be admitted to record and be recorded, in the several counties wherein the property is located, as a real estate mortgage when acknowledged in the manner provided by law; and the original of such mortgage, or a copy thereof certified by the auditor of any county in the state of Washington, wherein the original has been recorded, may be filed in a file to be kept for that purpose in the office of the auditor of the county wherein such property is situated, and said record and filing shall constitute notice to all persons of the existence of the mortgage lien provided for by the said mortgage. [8782.]

#### § 483. UNLAWFUL REMOVAL OF MORTGAGED PROPERTY.

Any mortgagor of personal property, or the successor in interest of such mortgagor, who, with intent to hinder, delay or defraud the mortgagee thereof, or his or her assigns or legal representatives, shall injure or destroy such property or any part thereof, or shall conceal such property or any part thereof, or shall remove the same or any part thereof from the county where it was situated at the date of the mortgage before it is duly released, without the consent in writing of the mortgagee, or shall sell or dispose of the same, or any interest therein, where he parts with the possession thereof, without the consent in writing of the mortgagee, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months or by a fine of not more than twice the value of such property, or by both such fine and imprisonment. [3669.]

## CHAPTER VII.

## LABOR AND MATERIALMEN'S LIEN.

- § 484. Lien for improvements on real property when.
- § 485. Form of claim, filing, etc.
- § 486. What the claim shall state.
- § 487. Form of claim.
- § 488. Lien right is assignable.
- § 489. Action on lien within eight months.
- § 490. The innkeeper's lien.
- § 491. Limitation of innkeeper's responsibility.
- § 492. The agistor's lien.
- § 493. The farm laborer's lien.
- § 494. The logger's lien.
- § 495. Lien on lumber at the mill.
- § 496. Lien on cut timber.
- § 497. Filing claim for logger's lien—Form.

Every person performing labor upon or furnishing material to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, fence, machinery, railroad, street railway, wagon road, aqueduct to create hydraulic power or any other structure, or who performs labor in any mine or mining claim or stone quarry, has a lien upon the same for the labor performed or materials furnished by each, respectively, whether performed or furnished at the instance of the owner of the property subject to the lien, or his agent; and every contractor, subcontractor, architect, builder or person having charge of the construction, alteration or repair of any property subject to the lien as aforesaid, shall be held to be the agent of the owner for the purposes of the establishment of the lien created by this chapter: Provided, that whenever any railroad company shall contract with any person for the construction of its road, or any part thereof, such railroad company shall take from the person with whom such contract is made a good and sufficient bond, conditioned that such person shall pay all laborers, mechanics and materialmen, and persons who supply such contractors with provisions, all just dues to such persons or to any person to whom any part of such work is given, incurred in carrying on such work, which bond shall be filed by such

railroad company in the office of the county auditor in each county in which any part of such work is situated. And if any such railroad company shall fail to take such bond, such railroad company shall be liable to the persons herein mentioned to the full extent of all such debts so contracted by such contractor. [1129.]

**§ 484. LIEN FOR IMPROVEMENTS ON REAL PROPERTY WHEN.**

Any person who, at the request of the owner of any real property, his agent, contractor or subcontractor, clears, grades, fills in or otherwise improves the same, or any street or road in front of, or adjoining the same, has a lien upon such real property for the labor performed, or the materials furnished for such purposes. [1131.]

**§ 485. FORM OF CLAIM, FILING, ETC.**

No lien created by this chapter shall exist, and no action to enforce the same shall be maintained, unless within ninety days from the date of the cessation of the performance of such labor or of the furnishing of such materials a claim for such lien shall be filed for record as hereinafter provided in the office of the county auditor of the county in which the property, or some part thereof to be affected thereby, is situated.

**§ 486. WHAT THE CLAIM SHALL STATE.**

Such claim shall state, as nearly as may be, the time of the commencement and cessation of performing the labor or furnishing the material, the name of the person who performed the labor or furnished the material, the name of the person by whom the laborer was employed (if known) or to whom the material was furnished, a description of the property to be charged with the lien sufficient for identification, the name of the owner or reputed owner if known, and if not known, that fact shall be mentioned, the amount for which the lien is claimed, and shall be signed by the claimant or by some person in his behalf, and be verified by the oath of the claimant, or some person in his behalf, to the effect that the affiant believes the claim to be just. In case

the claim shall have been assigned, the name of the assignee shall be stated, and such claim of lien may be amended, in case of action brought to foreclose the same, by order of the court, as pleadings in other cases may be, in so far as the interests of third parties shall not be affected by such amendment.

**§ 487. FORM OF CLAIM.**

A claim for lien substantially in the following form shall be sufficient:

.....,  
                     Claimant,  
                     v.  
 .....

Notice is hereby given that on the .... day [date of commencement of performing labor or furnishing material] ..... at the request of ..... commenced to perform labor [or to furnish material to be used] upon [here describe property subject to the lien] of which property the owner or reputed owner, is ..... [or if the owner or reputed owner is not known, insert the word "unknown"] the performance of which labor [or the furnishing of which material] ceased on the .... day of .....; that said labor performed [or material furnished] was of the value of ..... dollars, for which labor [or material] the undersigned claims a lien upon the property herein described, for the sum of ..... dollars. [In case the claim has been assigned, add the words, "and ..... is assignee of said claim or claims," if several are united.]

.....,  
                                     Claimant.

State of Washington,  
 County of .....,—ss.

....., being sworn, says: I am the claimant [or attorney of the claimant] above named; I have heard the foregoing claim read and know the contents thereof, and believe the same to be just.

.....

Subscribed and sworn to before me this .... day of .....

.....

Any number of claimants may join in the same claim for the purpose of filing the same and enforcing their liens, but in such case the amount claimed by each original lienor, respectively, shall be stated: Provided, it shall not be necessary to insert in the notice of claim of lien provided for by this chapter any itemized statement or bill of particulars of such claim. [1134.]

#### § 488. LIEN RIGHT IS ASSIGNABLE.

Any lien or right of lien created by law and the rights of action to recover therefor shall be assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses that might be made if such assignment had not been made. [1136.]

#### § 489. ACTION ON LIEN WITHIN EIGHT MONTHS.

No lien created by this chapter binds the property subject to the lien for a longer period than eight calendar months after the claim has been filed unless an action be commenced in the proper court within that time to enforce such lien; or, if credit be given, then eight calendar months after the expiration of such credit; and in case such action be not prosecuted to judgment within two years after the commencement thereof, the court, in its discretion, may dismiss the same for want of prosecution, and the dismissal of such action, or a judgment rendered therein, that no lien exists, shall constitute a cancellation of the lien. [1138.]

#### § 490. THE INNKEEPER'S LIEN.

Hereafter all hotel-keepers, innkeepers, lodging-house keepers, and boarding-house keepers in this state shall have a lien upon the baggage, property, or other valuables of their guests, lodgers, or boarders brought into such hotel, inn, lodging-house, or boarding-house by such guests, lodgers, or boarders, for the proper charges due from such guests, lodgers, or boarders for their accommodation, board, or lodging, and such other extras as are furnished at their request, and shall have the right to retain in their possession such baggage, property, or other valuables until such charges are fully paid, and to sell such baggage, property, or other valuables for the payment of such charges in the manner

provided in the next succeeding section of this chapter. [1201.] [See Rem. & Bal. Code, for procedure of sale.]

#### § 491. LIMITATION OF INNKEEPER'S RESPONSIBILITY.

No innkeeper who constantly has in his inn an iron safe or suitable vault in good order, and fit for the safe custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones and bullion, and who keeps a copy of this section, printed by itself in large, plain Roman type, and framed, constantly and conspicuously suspended in the office, bar-room, saloon, reading, sitting, and parlor room of his inn, and also a copy printed by itself in ordinary sized plain Roman type, posted upon the inside of the entrance door of every public sleeping-room of his inn, shall be liable for the loss of any such article suffered by any guest, unless such guest has first offered to deliver such property lost by him to such innkeeper for custody in such iron safe or vault, and such innkeeper has refused or neglected to receive and deposit such property in his safe or vault, and to give such guest a receipt therefor: Provided, that all doors to rooms furnished to guests shall be provided with slide-bolts inside of such rooms on all doors; otherwise he shall be liable; but every innkeeper shall be liable for any loss of the above-enumerated articles by a guest in his inn, when caused by the theft or negligence of the innkeeper or any of his servants. [1203.]

#### § 492. THE AGISTOR'S LIEN.

Any farmer, ranchman, herder of cattle, tavern-keeper, livery and boarding-stable keeper to whom any horses, mules, cattle, or sheep shall be intrusted for the purpose of feeding, herding, pasturing, training, caring for, or ranching, shall have a lien upon said horses, mules, cattle, or sheep for the amount that may be due for such feeding, herding, pasturing, training, caring for, or ranching, and shall be authorized to retain possession of such horses, mules, cattle, or sheep until the said amount is paid. Provided, that these provisions shall not be construed to apply to stolen stock. [1197.]

### § 493. THE FARM LABORER'S LIEN.

Any person who shall labor upon any farm or land, in tilling the same or in sowing or harvesting or threshing any grain, as laborer, contractor, or otherwise, or laboring upon, or securing or assisting in securing or housing any crop or crops sown, raised or threshed thereon during the year in which said work or labor was done, such person shall have a lien upon all such crops as shall have been raised upon all or any of such land, for such work or labor; and every landlord shall have a lien upon the crops grown or growing upon the demised lands of any year for the rents accrued or accruing for such year, whether the same is paid wholly or in part in money or specific articles of property, or products of the premises, or labor, and also for the faithful performance of the lease; and the lien created by the provisions of this section shall be a preferred lien, and shall be prior to all other liens. [1188.]

The law further provides that these liens are preferred liens generally, and that the claim must be filed within forty days after the work is done, or at the expiration of the term or after the expiration of each year of the lease.

### § 494. THE LOGGER'S LIEN.

Every person performing labor upon or who shall assist in obtaining or securing sawlogs, spars, piles, cordwood, shingle-bolts or other timber, and the owner or owners of any tugboat or towboat which shall tow or assist in towing, from one place to another within this state, any sawlogs, spars, piles, cordwood, shingle-bolts or other timber, and the owner or owners of any logging or other railroad over which sawlogs, spars, piles, cordwood, shingle-bolts, or other timber shall be transported and delivered, shall have a lien upon the same for the work or labor done upon, or in obtaining or securing, or for the services rendered in towing, transporting or driving, the particular sawlogs, spars, cordwood, shingle-bolts or other timber in said claim of lien described, whether such work, labor or services were done, rendered or performed at the instance of the owner of the same or his agent. The cook in a logging camp shall be regarded as a person who assists in obtaining or securing the timber herein mentioned. [1162.]

**§ 495. LIEN ON LUMBER AT THE MILL.**

Every person performing work or labor or assisting in manufacturing sawlogs and other timber into lumber and shingles has a lien upon such lumber while the same remains at the mill where it was manufactured or in the possession or under the control of the manufacturer, whether such work or labor was done at the instance of the owner of such logs or his agent or any contractor or subcontractor of such owner. The term "lumber," as used in this chapter, shall be held and be construed to mean all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of whatsoever nature or description manufactured from sawlogs or other timber. [1163.]

**§ 496. LIEN ON CUT TIMBER.**

Any person who shall permit another to go upon his timber land and cut thereon sawlogs, spars, piles or other timber, has a lien upon the same for the price agreed to be paid for such privilege, or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price. [1164.]

**§ 497. FILING CLAIM FOR LOGGER'S LIEN—FORM.**

Every person within thirty days after the close of the rendition of the services, or after the close of the work or labor mentioned in the preceding sections, claiming the benefit hereof, must file for record with the county auditor of the county in which such sawlogs, spar piles and other timber were cut or in which such lumber or shingles were manufactured, a claim containing a statement of his demand and the amount thereof, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any, and in case there is no express contract, the claim shall state what such service, work or labor is reasonably worth; and it shall also contain a description of the property to be charged with the lien sufficient for identification with

reasonable certainty, which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the same to be true, which claim shall be substantially in the following form:—

....., }  
                     Claimant, }  
                     v.                 }  
 .....

Notice is hereby given that ..... of ..... county, state of Washington, claims a lien upon a ..... of ....., being about ..... in quantity, which were cut or manufactured in ..... county, state of Washington, are marked thus ....., and are now lying in ....., for labor performed upon and assistance rendered in ..... said .....; that the name of the owner or reputed owner is .....; that ..... employed said ..... to perform such labor and render such assistance upon the following terms and conditions, to wit:—

The said ..... agreed to pay the said ..... for such labor and assistance .....; that said contract has been faithfully performed and fully complied with on the part of said ....., who performed labor upon and assisted in ..... said ..... for the period of .....; that said labor and assistance were so performed and rendered upon said ..... between the .... day of ..... and the .... day of .....; and the rendition of said service was closed on the .... day of .....; and thirty days have not elapsed since that time; that the amount of claimant's demand for said service is .....; that no part thereof has been paid except ....., and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of ..... in which amount he claims a lien upon said ..... The said ..... also claims a lien on all said ..... now owned by said ..... of said county to secure payment for the work and labor performed in obtaining or securing the said logs, spars, piles or other timber, lumber or shingles herein described.

State of Washington,  
County of .....,—ss.

..... being first duly sworn, on oath says that  
he is ..... named in the foregoing claim, has heard  
the same read, knows the contents thereof, and believes  
the same to be true.

.....

Subscribed and sworn to before me this .... day of  
:.....

..... [1168.]

## CHAPTER VIII.

## PRIVATE CORPORATIONS.

- § 498. General provision for forming.
- § 499. Two or more persons.
- § 500. Written articles.
- § 501. File one of such articles.
- § 502. Said articles shall state.
- § 503. This limit of existence.
- § 504. Amendments may be made.
- § 505. Form of corporation acknowledgment.
- § 506. Names of officers to be filed.
- § 507. Corporation powers.

## § 498. GENERAL PROVISION FOR FORMING.

Corporations for manufacturing, mining, milling, wharfing and docking, mechanical, banking, mercantile, improvement and building purposes, or for the building, equipping and managing water flumes for the transportation of wood and lumber, or for the purpose of building, equipping and running railroads, or constructing canals or irrigation canals, or engaging in any other species of trade or business, may be formed according to the provisions of this chapter; such corporations and the members thereof being subject to all the conditions and liabilities herein imposed, and to none others: Provided, that no such corporation shall commence business or institute proceedings to condemn land for corporate purposes until the whole amount of its capital stock is subscribed: And provided further, that the provisions of the foregoing proviso shall not apply to corporations engaged exclusively in raising money from, and loaning or repaying it to, their own members, and which confine their loaning and business operations wholly to the counties of their principal place of business respectively, and to the counties adjacent and adjoining thereto. [3677.]

## § 499. TWO OR MORE PERSONS.

Any two or more persons, who may desire to form a company for one or more of the purposes specified in the preceding section.

**§ 500. WRITTEN ARTICLES.**

Shall make and subscribe written articles of incorporation in triplicate and

**§ 501. FILE ONE OF SUCH ARTICLES;**

In the office of the secretary of state, and another in the office of the county auditor of the county in which the principal place of business of the company is intended to be located, and retain the third in the possession of the corporation.

**§ 502. SAID ARTICLES SHALL STATE;**

The corporate name of the company, the objects for which the same shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years: Provided, that

**§ 503. THIS LIMIT OF EXISTENCE;**

Shall not apply to any life, accident and health insurance company the number of shares of which the capital stock shall consist, the number of trustees and their names, who shall manage the concerns of the company for such length of time (not less than two nor more than six months) as may be designated in such certificate, and the name of the city, town, or locality and county in which the principal place of business of the company is to be located.

**§ 504. AMENDMENTS MAY BE MADE.**

To the articles of incorporation by a majority vote of its trustees and the vote or written assent of two-thirds of the capital stock of such corporation. If the written assent of two-thirds of the capital stock has not been obtained then the vote of said stock may be taken at any regular meeting of the stockholders or at any special meeting of the stockholders called for that purpose in the manner provided in the by-laws of such corporation for special meetings of the stockholders. The president and secretary of said corporation shall certify said amendments in triplicate under the seal of said corporation to be correct, and file and keep the same as in the case of original articles, and from the time of filing said amendments such corporation shall have the same powers and it and the stockholders thereof shall be sub-

ject to the same liabilities as if such amendments had been embraced in the original articles of incorporation. Nothing contained in this section shall be construed to cure or amend any defect existing in any original articles of incorporation in that such articles did not set forth the matters required to make the same valid at the time of filing, nor cure or amend any defect in the execution thereof. The time of existence of such corporation shall not be extended by amendments beyond the time fixed in the original articles of incorporation. [3679.]

#### § 505. FORM OF CORPORATION ACKNOWLEDGMENT.

Certificates of acknowledgment of an instrument acknowledged by a corporation substantially in the following form shall be sufficient:

State of .....,  
County of .....,—ss.

On this .... day of ....., A. D. 19...., before me personally appeared ....., to me known to be the [president, vice-president, secretary, treasurer, or other authorized officer or agent, as the case may be] of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

[Signature and title of officer.]

#### § 506. NAMES OF OFFICERS TO BE FILED.

Every corporation heretofore organized under the laws of the territory or state of Washington, and every corporation which may hereafter be organized under the laws of this state, shall, on or before the second Tuesday of January of each year, and at such other times as such corporations may elect so to do, file with the county auditor of the county in which such corporation has its principal place of business, a statement, sworn

to by its president and attested by its secretary and sealed with its corporate seal, containing a list of all its officers and their respective titles of office, names and addresses, and the term of office for which they had been chosen. [3691.]

### § 507. CORPORATION POWERS.

When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body corporate and politic in fact and in name, by the name stated in their certificate, and by their corporate name have succession for the period limited, and shall have power:

1. To sue and be sued in any court having competent jurisdiction.

2. To make and use a common seal and to alter the same at pleasure.

3. To purchase, hold, mortgage, sell and convey real and personal property.

4. To appoint such officers, agents, and servants as the business of the corporation shall require; to define their powers, prescribe their duties, and fix their compensation.

5. To require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of two-thirds of the stockholders as hereinafter provided.

6. To make by-laws not inconsistent with the laws of the Congress of the United States and of this state.

7. The management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company, as expressed in the articles of incorporation.

## CHAPTER IX.

### PARTNERSHIPS.

- § 508. Two or more persons may form partnership.
- § 509. Limited partnership.
- § 510. Filing of partnership certificate.
- § 511. Partnership certificate to be published.
- § 512. As parties to actions.
- § 513. Dissolution of partnership.

#### § 508. TWO OR MORE PERSONS MAY FORM PARTNERSHIP.

Limited partnership for the transaction of mercantile, mechanical or manufacturing business may be formed within this state, by two or more persons, upon the terms and subject to the conditions contained in this act. [8359.]

#### § 509. LIMITED PARTNERSHIP.

A limited partnership may consist of two or more persons, who are known and called general partners, and are jointly and severally liable as general partners now are by law, and of two or more persons who shall contribute to the common stock a specific sum in actual money as capital, and are known and called special partners, and are not personally liable for any debts of the partnership, except as in this act specially provided. [8360.]

#### § 510. FILING OF PARTNERSHIP CERTIFICATE.

The persons forming such partnership shall make and severally subscribe a certificate, in duplicate, and file one of such certificates with the county auditor of the county in which the principal place of business of the partnership is to be. Before being filed, the execution of such certificate shall be acknowledged by each partner subscribing it before some officer authorized to take acknowledgments of deeds, and such certificate shall contain:

The name assumed by the partnership and under which its business is to be conducted;

The names and respective places of residence of all the general and special partners;

The amount of capital which each special partner has contributed to the common stock;

The general nature of the business to be transacted; and

The time when the partnership is to commence and when it is to terminate.

#### **§ 511. PARTNERSHIP CERTIFICATE TO BE PUBLISHED.**

Such partnership cannot commence before the filing of the certificate of partnership, and if a false statement is made in such certificate, all the persons subscribing thereto are liable as general partners for all the debts of the partnership. The partners shall for four consecutive weeks immediately after the filing of the certificate of partnership publish a copy of the same in some weekly newspaper published in the county where the principal place of business of the partnership is, or if no such paper be published therein, then in some newspaper in general circulation therein, and until such publication is made and completed, the partnership is to be deemed general. [8361.]

#### **§ 512. AS PARTIES TO ACTIONS.**

All actions, suits or proceedings respecting the business of such partnership, shall be prosecuted by and against the general partners only, except in those cases where special partners or partnerships are to be deemed general partners, or partnership, in which case all the partners deemed general partners may join therein; and excepting also those cases where special partners are severally liable on account of sums or amounts received or withdrawn from the capital stock as provided in section [8366.]

#### **§ 513. DISSOLUTION OF PARTNERSHIP.**

No dissolution of a limited partnership shall take place except by operation of law, before the time specified in the certificate of partnership, unless a notice of such dissolution, subscribed by the general and special partners, is filed with the original certificate of partnership or the certificate, if any, renewing or continuing such partnership, nor unless a copy of such notice be published for the time and in the manner prescribed for the publication of the certificate of partnership. [8367.]

## CHAPTER X.

## SALES OF UNCLAIMED PROPERTY.

- § 514. Notice of sale of unclaimed property.
- § 515. Affidavit for sale.
- § 516. Order of sale.
- § 517. How sale is made.
- § 518. The constable's return.
- § 519. Proceeds of sale disposed.
- § 520. Sale of perishable property.
- § 521. Fees for justice and constable.
- § 522. Finder of lost property.

The law provides that a forwarding merchant, wharfinger, warehouse or tavern keeper, or the keeper of any depot for the storage of trunks, baggage and other personal property, shall keep a record of such property. Upon receipt of the same, he must then notify the consignee that he has such property in care for him, and thereafter, if the consignee does not call for or claim the same, the property is to be held for the period of one year and then sold according to the following procedure:

**§ 514. NOTICE OF SALE OF UNCLAIMED PROPERTY.**

Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days' notice of such sale shall be given him, either personally or by mail, or by leaving a notice at his residence or place of doing business; but if the name and residence of the owner be not known, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively, in a newspaper, if there be one published in the same county; if there be no newspaper published in the same county, then said notice shall be published in a newspaper nearest thereto in the state; the last publication of such notice shall be at least eighteen days previous to the time of sale.  
[7130.]

After sixty days the holder makes affidavit before a justice of the peace, setting forth compliance with the above statute.

**§ 515. AFFIDAVIT FOR SALE.**

If the owner or person entitled to such property shall not take the same away, and pay the charges thereon, after sixty days' notice shall have been given, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to a justice of the peace of the same county an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown. [7131.]

Whereupon the justice opens the package, inventories the contents, and orders the constable to sell the same.

**§ 516. ORDER OF SALE.**

Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order, under his hand, that the property therein described be sold by any constable of the precinct where the same shall be, at public auction. [7132.]

**§ 517. HOW SALE IS MADE.**

It shall be the duty of such constable receiving such inventory and order to give ten days' notice of sale, by posting up written notices thereof in three or more places in such precinct, and to sell such property at public auction to the highest bidder, in the same manner as provided by law for sales under execution from justices' court. [7133.]

**§ 518. THE CONSTABLE'S RETURN.**

Upon completing the sale, the constable making the same shall indorse upon the order aforesaid a return of his proceedings thereon, and return the same to the justice, together with the inventory and the proceeds of sale, after deducting his fees. [7134.]

**§ 519. PROCEEDS OF SALE DISPOSED.**

From the proceeds of such sale, the justice shall pay all legal charges that have been incurred in relation to such property, or a ratable proportion of each charge, if the proceeds of said sale shall not be sufficient to pay

all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of the county in which the same shall be sold, and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges, and expenses paid to each person. [7135.]

Perishable property may be kept thirty days and may be sold by giving ten days' notice. Decayed or decaying property may be summarily sold on the justice's order.

#### § 520. SALE OF PERISHABLE PROPERTY.

Property of a perishable kind, and subject to decay by keeping, consigned or left in manner before mentioned, if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof, the sale to be conducted and the proceeds of the same to be applied in the manner before provided in this title; provided, that any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a justice of the peace, after inspection thereof, as provided in section 7132, Rem. & Bal. [7139.]

#### § 521. FEES FOR JUSTICE AND CONSTABLE.

The fees allowed to any justice of the peace, under the provisions of this title, shall be three dollars for each day's service; and to any constable, the same fees as are allowed by law for sales upon an execution, and ten cents a folio for making an inventory of property. [7140.]

#### § 522. FINDER OF LOST PROPERTY.

Every finder of lost goods of the value of ten dollars or more shall, in addition to the requirements of the preceding section, within fifteen days after finding the same, cause notice thereof to be published in a newspaper printed in the county, if there be one published therein, and if there be none, then such notice shall be posted up in three of the most public places in the county; and if no person shall appear to claim the same, who may be entitled thereto, he shall, within two months after finding such goods, and before using the same to their injury, procure an appraisal thereof by a justice

of the peace of his county, which appraisal shall be certified to by such justice, and filed in the office of the clerk of the board of county commissioners of such county. [7142.]

The owner may recover the same within one year, by paying all the costs and charges and compensating the finder for his trouble. [7143.]

## CHAPTER XI.

## ABATEMENT OF NUISANCES.

- § 523. Public nuisance.
- § 524. Any person may abate.
- § 525. Action by private person.
- § 526. Definition of nuisance.
- § 527. Statutory nuisances.
- § 528. Resorts declared to be nuisances.
- § 529. Order of abatement and warrant.
- § 530. Bond for staying warrant.
- § 531. Execution of warrant.

## § 523. PUBLIC NUISANCE.

A public nuisance is one which affects equally the rights of an entire community or neighborhood, although the extent of the damage may be unequal. [8307.]

When such a nuisance exists, it may be abated by the action of a public body or officer with proper authority. The action is brought in the name of the community and may be by the indictment of a grand jury or upon information.

A public nuisance may be abated by any public body or officer authorized thereto by law. [8317.]

When the public nuisance especially injures any one individual, the person so suffering may remove and even destroy the offending nuisance, provided that in so doing he does not break the peace. When he cannot peaceably abate the nuisance, he should make his complaint to the proper authority and allow the same to be abated by process of law as provided.

## § 524. ANY PERSON MAY ABATE.

Any person may abate a public nuisance which is specially injurious to him, by removing, or if necessary destroying, the thing which constitutes the same, without committing a breach of the peace or doing unnecessary injury. [8318.]

On the other hand, he may maintain an action to abate a public nuisance where he is specially injured.

### § 525. ACTION BY PRIVATE PERSON.

A private person may maintain a civil action for a public nuisance, if it is specially injurious to himself, but not otherwise. [8316.]

### § 526. DEFINITION OF NUISANCE.

Nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property. [8309.]

The following are set forth by the statute to be nuisances:

### § 527. STATUTORY NUISANCES.

It is a public nuisance,—

1. To cause or suffer the carcass of any animal or any offal, filth or noisome substance to be collected, deposited or to remain in any place to the prejudice of others;

2. To throw or deposit any offal or other offensive matter, or the carcass of any dead animal, in any water-course, stream, lake, pond, spring, well, or common sewer, street or public highway, or in any manner to corrupt or render unwholesome or impure the water of any such spring, stream, pond, lake or well, to the injury or prejudice of others;

3. To obstruct or impede, without legal authority, the passage of any river, harbor, or collection of water;

4. To obstruct or encroach upon public highways, private ways, streets, alleys, commons, landing-places, and ways to burying places;

5. To carry on the business of manufacturing gunpowder, nitroglycerine or other highly explosive substance, or mixing or grinding the materials therefor, in

any building within fifty rods of any valuable building, erected at the time such business may be commenced;

6. To establish powder magazines near incorporated cities or towns, at a point different from that appointed by the corporate authorities of such city or town; or within fifty rods of any occupied dwelling-house;

7. To erect, continue, or use any building, or other place, for the exercise of any trade, employment or manufacture, which, by occasioning obnoxious exhalations, offensive smells or otherwise is offensive or dangerous to the health of individuals or of the public;

8. To suffer or maintain on one's own premises, or upon the premises of another, or to permit to be maintained on one's own premises, any place where wines, spirituous, fermented, malt or other intoxicating liquors are kept for sale or disposal to the public in contravention of law.

And every person who has the care, government, management or control of any building, structure, powder magazine, or any other place mentioned in this section shall, for the purposes of this section, be taken and deemed to be the owner or agent of the owner or owners of such building, structure, powder magazine or other place, and, as such, may be proceeded against for the erecting, contriving, causing, continuing or maintaining such nuisance. [8308.]

## § 528. RESORTS DECLARED TO BE NUISANCES.

Houses of ill-fame, kept for the purpose, in which are embraced all squaw dance-houses, or squaw brothels, otherwise called mad-houses; all houses, rooms, saloons, booths, scows, boats, or other structures used as a place of resort, where women are employed to draw custom, dance, or for purposes of prostitution; all public houses or places of resort where gambling is carried on or permitted; all houses or places within any city, town, or village, or upon any public road or highway, where drunkenness, gambling, fighting, or breaches of the peace are carried on or permitted; all opium dens or houses, or places of resort where opium smoking is permitted, are nuisances, and may be abated, and the owners, keepers, or persons in charge thereof, and per-

sons carrying on such unlawful business, shall be punished as provided in this chapter. [8319.]

#### § 529. ORDER OF ABATEMENT AND WARRANT.

When, upon indictment (or information), complaint or action, any person is adjudged guilty of a nuisance, the court before whom such conviction is had may, in addition to the fine imposed, if any, or to the judgment for damages or costs, for which a separate execution may issue, order that such nuisance be abated or removed, at the expense of the defendant, and after inquiry into and estimating, as nearly as may be, the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor. When the conviction is had upon an action before a justice of the peace, and no appeal is taken, the justice, after estimating, as aforesaid, the sum necessary to defray the expenses of removing or abating the nuisance, may issue a like warrant. [8321.]

A bond that the defendant will discontinue the nuisance will operate to stay the execution of the warrant.

#### § 530. BOND FOR STAYING WARRANT.

Instead of issuing such warrant, the court or justice may order the same to be stayed upon motion of the defendant, and upon his entering into a bond in such sum and with such surety as the court may direct to the state, conditioned either that the defendant will discontinue said nuisance, or that within a time limited by the court, and not exceeding six months, he will cause the same to be abated and removed, as either is directed by the court, and upon his default to perform the condition of his bond, the same shall be forfeited, and the court, or justice of the peace, as the case may be, upon being satisfied of such default, may order such warrant forthwith to issue, and a rule to show cause why judgment should not be entered against the sureties of said bond. [8322.]

The fences, materials and buildings of obstructions may be sold on the process of the warrant, just as an execution of a judgment; any balance that may be left over being returned to the defendant.

**§ 531. EXECUTION OF WARRANT.**

The expense of abating a nuisance by virtue of a warrant can be collected by the officer in the same manner as damages and costs are collected on execution, except that the materials of any buildings, fences, or other things that may be removed as a nuisance may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of the removal, such balance must be paid by the officer to the defendant or to the owner of the property levied upon, and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof. [8323.]

## CHAPTER XII.

### DOMESTIC ANIMALS AND FISH LAWS.

- § 532. Damaged party may retain animals.
- § 533. Notice to owner.
- § 534. Notice by posting.
- § 535. Action for damages.
- § 536. Judgment lien on animals.
- § 537. Continuance and service where defendant is unknown.
- § 538. Surplus money deposited with county treasurer.
- § 539. Justices have jurisdiction.
- § 540. Jurisdiction of violations of fishing laws.

The justice of the peace has jurisdiction of all damages made by the depredations of domestic animals when the amount of the damage so done does not exceed one hundred dollars (\$100). He has also authority to punish violations of the state fishery laws. He has power to abate nuisances.

#### § 532. DAMAGED PARTY MAY RETAIN ANIMALS.

A person suffering damage by the trespassing of another's domestic animals may take the animals and keep them until his damages are paid.

Any person suffering damage done by horses, mares, mules, asses, cattle, goats, sheep, swine or any such animals, which shall trespass upon any cultivated land, inclosed by lawful fence, may retain and keep in custody such offending animals until the owner of such animals shall pay such damage and costs, or until good and sufficient security be given for the same. [3187.]

The person so retaining cattle must give the owner thereof written notice within twenty-four hours of his action.

#### § 533. NOTICE TO OWNER.

Whenever any animals are restrained as provided in the last section, the person restraining such animals shall within twenty-four hours thereafter notify in writing the owner, or person in whose custody the same was at the time the trespass was committed, of the seizure

of such animals, and the probable amount of the damages sustained: Provided, he knows to whom such animals belong. [3188.]

When the person seizing such animals does not know the owner, the foregoing notice is given by publication.

#### § 534. NOTICE BY POSTING.

If the owner or the person having charge or possession of such animals is unknown to the person sustaining the damage, the notice provided in the last section shall be given by posting three notices, in three public places in the neighborhood where the animals are restrained, for ten days. [3189.]

#### § 535. ACTION FOR DAMAGES.

If the owner of the trespassing cattle does not settle the damages, the injured person has an action therefor.

If the owner or person having such animals in charge fails or refuses to pay the damages done by such animals, or give satisfactory security for the same within twenty-four hours from the time the notice was served, if served personally, and within ten days from the date of posting of the notice as provided in the last section, the person damaged may commence a suit, before any court having jurisdiction thereof, against the owner of such animals, or against the persons having the same in charge, or possession, when the trespass was committed, if known; and if unknown, the defendant shall be designated as John Doe, and the proceedings shall be the same in all respects as in other civil actions, except as herein modified. [3190.]

The judgment secured on the trial of such action becomes a lien upon the animals in question.

#### § 536. JUDGMENT LIEN ON ANIMALS.

Upon the trial of an action as herein provided the plaintiff shall prove the amount of damages sustained and the amount of expenses incurred for keeping the offending animals, and any judgment rendered for damages, costs and expenses against the defendant shall be a lien upon such animals committing the damage, and the same may be sold and the proceeds shall be applied in full satisfaction of the judgment as in other cases of

sale of personal property on execution; Provided, that no judgment shall be continued against the defendant for any deficiency over the amount realized on the sale of such animals, if it shall appear upon the trial that no damage was sustained, or that a tender was made and paid into court of an amount equal to the damage and costs, then judgment shall be rendered against the plaintiff for costs of suit and damage sustained by defendant. [3191.]

**§ 537. CONTINUANCE AND SERVICE WHERE DEFENDANT IS UNKNOWN.**

If upon the trial it appears that the defendant is not the owner or person in charge of such offending animals, the case shall be continued, and proceedings had as in the next section provided, if the proper defendant be unknown to plaintiff. [3192.]

If the owner or keeper of such offending animals is unknown to plaintiff at the commencement of the action, or if on the trial it appears that the defendant is not the proper party defendant, and the proper party is unknown, service of the summons or notice, with a notice attached, stating the object of the action and giving a description of the animals seized, in a weekly newspaper published nearest to the residence of the plaintiff, if there be one published in the county; and if not, by posting said summons or notice with said notice attached in three public places in the county, in either case not less than ten days previous to the day of trial. [3193.]

**§ 538. SURPLUS MONEY DEPOSITED WITH COUNTY TREASURER.**

If, when such animals are sold, there remains a surplus of money, over the amount of the judgment and costs, it shall be deposited with the county treasurer, by the officer making the sale, and if the owner of such animals does not appear and call for the same, within six months from the day of sale, it shall be paid into the school fund, for the use of the public schools of said county. [3194.]

**§ 539. JUSTICES HAVE JURISDICTION.**

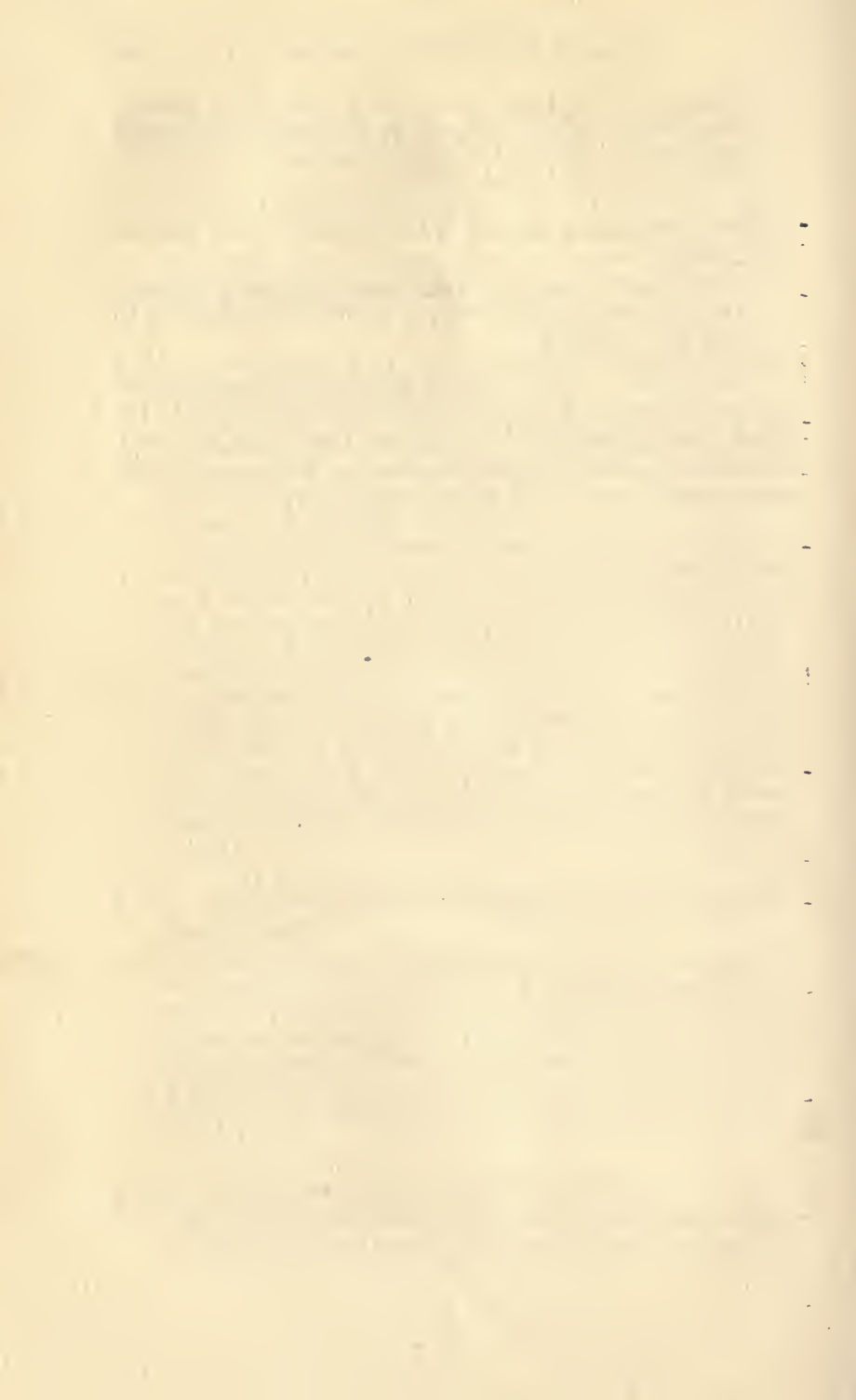
Justices of the peace shall have exclusive jurisdiction of all actions and proceedings under this act when the

damages claimed do not exceed one hundred dollars: Provided, however, that any party considering himself aggrieved shall have the right of appeal to the superior court as in other cases. [3195.]

#### § 540. JURISDICTION OF VIOLATIONS OF FISHING LAWS.

Justices of the peace shall have concurrent jurisdiction with the superior court of all offenses mentioned in this act. [5201.]

This refers to various statutes prohibiting the use of explosives for fishing purposes; restoring young salmon to the water; nets, seines and boats; closed season for sturgeon, etc., to be found in the second volume of Remington & Balinger's Code, Title XXXV and Chapter IV.



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